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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

11-CR-424 (NRB)

6 GULAY CIBIK, REFAEL BRODJIK,  
7 a/k/a "Rafi," NATHAN SCHWARTZ,  
8 HAROLD TISCHLER, a/k/a  
9 "Hershy,"

10 Defendants.

Jury Trial

11 -----x  
12 New York, N.Y.  
13 January 16, 2013  
14 9:12 a.m.

15 Before:

16 HON. NAOMI REICE BUCHWALD,

17 District Judge

18 APPEARANCES

19 PREET BHARARA

20 United States Attorney for the  
21 Southern District of New York

22 JANIS ECHENBERG

23 JAMES J. PASTORE, JR.

24 Assistant United States Attorneys

25 MICHAEL DINET, Paralegal Specialist

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BY: XAVIER R. DONALDSON, ESQ.

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JEREMY L. GUTMAN, ESQ.

Attorneys for Defendant Refeal Brodjik

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1 APPEARANCES  
2 (Continued)3 BRILL LEGAL GROUP, P.C.  
4 Attorneys for Defendant Nathan Schwartz  
5 BY: PETER E. BRILL, ESQ.6 PAUL GREENFIELD, ESQ.  
7 Attorney for Defendant Harold Tischler8 ALSO PRESENT: DEIDRE GORDON, Special Agent, Homeland Security  
9 RYAN GIBBS, Special Agent, U.S. Dept. of Labor10  
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1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Good morning, everybody.

4 MS. ECHENBERG: Good morning, your Honor.

5 THE COURT: Mr. Gerzog, I understand there's something  
6 you wanted to put on the record before we started?

7 MR. GERZOG: Yes, your Honor. Yesterday my  
8 19-year-old college daughter -- college student daughter came  
9 to watch me do my opening statement at about 2:15.

10 THE COURT: Was she impressed?

11 MR. GERZOG: I will withhold comment.

12 THE COURT: Okay.

13 MR. GERZOG: She was sitting in the -- she sat down in  
14 the pews, not knowing anything about court or where anybody was  
15 or who anybody was. She sat down, and one of the jurors, the  
16 African American lady, said to her, "You're new." And my  
17 daughter said, "What do you mean?" And she said -- and the  
18 juror said, "You weren't here this morning." And my daughter  
19 said, "Oh, I'm just here to see my father give his opening."  
20 And the juror said, "Oh, that's cool. Which one is your  
21 father?" And she said, "He's the lawyer at the middle table  
22 with the curly hair." And the woman said, "Have you ever seen  
23 him do an opening before?" And she said, "I have seen him at  
24 trial before but I've never seen him do an opening." And the  
25 woman said, "I guess I ought to tell you that I'm one of the

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1 prospective jurors," at which point my daughter said, "I guess  
2 I'd better move my seat," and got up and moved away.

3 THE COURT: Sounds like a very mature 19-year-old.

4 MR. GERZOG: So I just wanted to let you know --

5 THE COURT: She gets points.

6 MR. GERZOG: Okay.

7 THE COURT: She can come back after having been so  
8 good; how about that?

9 MR. GERZOG: Very good.

10 THE COURT: We were missing a couple of jurors a few  
11 minutes ago.

12 MS. ECHENBERG: Your Honor, can I raise one issue?

13 THE COURT: Sure.

14 MS. ECHENBERG: So our second witness today is going  
15 to be an employee from the Department of Labor who's going to  
16 talk about the alien labor certification program and how it  
17 works.

18 THE COURT: Yes.

19 MS. ECHENBERG: And she's also going to be a custodian  
20 of records for several of the files of the Department of Labor,  
21 principally all of the applications that we'll put in that  
22 listed Harold Tischler and Nathan Schwartz as an employer  
23 sponsor, and part of those files include call logs, where  
24 employees of the Department of Labor keep records every time  
25 they have an interaction with someone related to that

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1 particular file. So there are call logs that are associated  
2 with various files. And we intended to put those records in as  
3 business records, or as records kept in the regular course of  
4 business. She'll testify that they were part of the Department  
5 of Labor's regular course of business, they were recorded  
6 contemporaneously with the phone calls. Defense counsel has  
7 advised that they are going to object to the admission of those  
8 documents as documents kept in the regular course of business,  
9 so I just thought if we could get a ruling from your Honor  
10 before the witness testifies.

11 THE COURT: What would be the basis for that?

12 MR. BRILL: The -- it seemed to us, Mr. Greenfield and  
13 I, that it's not only the government's purpose to bring them in  
14 as business records but to bring them in as either *res gestae*  
15 or admissions by the defendants, Mr. Tischler or Mr. Schwartz,  
16 as having involvement in this scheme because there are notes  
17 within these call logs that say they allegedly spoke to our  
18 clients and our clients confirm they are -- these alien  
19 applications as being accurate.

20 Now our clients, I believe -- I don't want to speak  
21 exclusively for Mr. Greenfield, but certainly with respect to  
22 Mr. Schwartz if not Mr. Tischler, our clients deny ever having  
23 these conversations except for the two for Mr. Schwartz and the  
24 three for Mr. Tischler that were legitimate applications. And  
25 there are a couple of dozen exhibits, each that the government

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1 intends to enter.

2           There are, more tellingly, numbers on other entries  
3 where the record does not say that they spoke to Mr. Schwartz.  
4 Those numbers don't correspond to numbers that were either in  
5 service for Mr. Schwartz at the time or actually ever used by  
6 Mr. Schwartz. Now for the records that have the phone numbers,  
7 there's no record of conversation, and for the record of the  
8 conversation, there's no record of what phone number was  
9 called. So it's a little more confusing that way.

10           But the damaging issue for us specifically is, "Spoke  
11 to Mr. Schwartz, Mr. Schwartz confirmed this," this issue,  
12 where you don't know who made the entry. All it says is that  
13 it was entered by a specific person, not that that was the  
14 person who had the conversation. We don't know what phone  
15 number was called. And whereas the custodian of records may  
16 say that this is a regular -- a record kept in the regular  
17 course of business of the Department of Labor, there's still a  
18 reliability issue because the information contained -- I  
19 understand --

20           THE COURT: The person writing this down is totally  
21 unaware at the time that there's going to be a case in this  
22 courtroom.

23           MR. BRILL: Right.

24           THE COURT: There's no reason for them to deliberately  
25 misstate what they entered; right?

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1                   MR. BRILL: No. We don't know whether the person who  
2 had the conversation, as I said, Judge, was the person who  
3 entered it. So we have no ability to confront these people now  
4 if they're being brought in as business records.

5                   THE COURT: But first of all, don't you have all sorts  
6 of capacity to engage in effective cross-examination to  
7 establish the doubt that these entries reflect actual  
8 conversations with your client?

9                   MR. BRILL: I can almost guarantee you -- I could be  
10 wrong, but I can almost guarantee you that the responses that  
11 the person that the government is calling today to try to bring  
12 in these records will be, "I have no knowledge of that," "I  
13 have no knowledge of that," "I have no knowledge of that."

14                  THE COURT: Well, if you ask the question of this  
15 person, "Do you know that the individual listed as the person  
16 at the other end of the conversation actually was that person?"  
17 they would say, "I have absolutely no way of knowing."

18                  MR. BRILL: That person --

19                  THE COURT: If you ask them, "Could someone have  
20 pretended to be Mr. Schwartz and given the name?" and they  
21 would say, "Absolutely."

22                  MR. BRILL: I think that's flat out speculation on the  
23 part of a custodian of records, who may have little, if any,  
24 connection to --

25                  THE COURT: Isn't it just like examining call records

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1 where you have the numbers called and the lawyer says, "Well,  
2 you don't know what was said in that call and you don't really  
3 know who actually made the call, all you know is you have these  
4 phone numbers"?

5 MR. BRILL: I understand the court's point. This is  
6 far more damaging to use his name. It's not, you know, who's  
7 on the phone; it's your saying that this person was on the  
8 phone. Now, again, in a situation -- you know, the AT&T  
9 representative who comes in with phone records is going to have  
10 the exact same responses. "I have no idea. I was just sent  
11 here to authenticate records. I have no idea what goes on with  
12 the Department of Labor."

13 Now if the government were required to produce the  
14 people who created these records, then you'd have an effective  
15 cross-examination. I, you know -- as the court has already  
16 informed the jury, it's the answers that count, and the answers  
17 to all of those questions from Mr. Greenfield and myself will  
18 be, "I have no idea."

19 THE COURT: That's pretty good reasonable doubt, isn't  
20 it?

21 MR. BRILL: As opposed to -- let's take, Judge, one  
22 example here. Excuse me. One of the people who says, "Nathan  
23 Schwartz returned my call and confirmed sponsorship," in  
24 government's proposed Exhibit 101-2-A, it says, "Entered by  
25 Nina Gillis." Now if Nina Gillis -- we know who this person

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1 is, and the person is clearly available to the government. If  
2 this person comes in here and says, "I spoke to someone, I  
3 don't know who that person was, this is the number I called,"  
4 that is far more -- and the number, Judge, as I said, is not on  
5 this exhibit. There's -- and there's no way, as far as I can  
6 tell, to confirm through this exhibit what number was actually  
7 called.

8 THE COURT: And, you know, she would say no more than,  
9 "I have absolutely no recollection of that actual conversation  
10 today, but what I wrote down then was accurate as to time.  
11 Independent of what's on the piece of paper, I don't have any  
12 memory of that."

13 MR. BRILL: Well, right, but --

14 THE COURT: I mean, that's the reality.

15 MR. BRILL: But at least that's the person who was  
16 actually involved in the transaction. Right now all we have is  
17 someone who has no knowledge of the transaction whatsoever.

18 THE COURT: Isn't that worse for you?

19 MR. BRILL: It could be worse, frankly.

20 THE COURT: No. I mean, the point is, then you really  
21 have a human being saying, "I always, you know, make an entry  
22 at the time that's accurate. I don't have a memory about it  
23 now, but what I wrote down, that happened then. That's what he  
24 said at the time. If I wrote it down, that's what happened."

25 Why is that better for you than having this come in in this

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1 more disembodied way, where you are able to cross and establish  
2 that the witness can't say?

3 MR. BRILL: Because I imagine the government's going  
4 to then close by saying, "We have these very reliable records  
5 from the Department of Labor that say they spoke to Nathan  
6 Schwartz."

7 THE COURT: It would be more reliable if the actual  
8 person who made the entry got on the stand and testified.

9 MR. BRILL: All right.

10 THE COURT: Right? Wouldn't it?

11 MR. BRILL: Judge, with all due respect, that's your  
12 opinion, and I respect your opinion, but I believe,  
13 respectfully, we are --

14 THE COURT: But isn't a business record just what that  
15 is?

16 MR. BRILL: I don't know if this is a business record.  
17 I know that the person on the stand will testify that --  
18 they'll say all the right words to make this a business record.  
19 What I think is that we are lacking the ability to confront  
20 the --

21 THE COURT: But that's exactly how it happens all the  
22 time with the business records.

23 MR. BRILL: And just as the Supreme Court has said,  
24 you know, with the drug test results -- I know it's taking a  
25 slight leap, but we should be able to confront the accuser here

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1 just as we should be able to confront the lab technician with  
2 the drug test results.

3 THE COURT: Let me hear from the government.

4 MS. ECHENBERG: Yes, your Honor. First of all, I  
5 would just cite a case to you, *United States v. Stewart*, which  
6 is 433 F.3d 273, and it's a Second Circuit case decided  
7 January 6, 2006, and it talks specifically about a phone log  
8 being received in evidence as a business record, and it talks  
9 about how, you know, business records are made reliable by  
10 their regularity and continuity which produce habits of  
11 precision by actual experience of business in relying upon them  
12 or by duty to make an accurate record as part of a continuing  
13 job or occupation, and that's exactly what's going on here.

14 There are -- and I had passed up to Ms. Tannenbaum  
15 some exhibits for later. I don't know if they made their way  
16 to the bench. But the exhibits that are marked 101- and then  
17 there's a number and then there's an A at the bottom, these are  
18 the phone logs that we intend to put in, and you'll see that  
19 they note a date and they note who it's entered by, and I  
20 expect that the Department of Labor witness will testify that  
21 the person who entered it, it's their job to make an entry  
22 every time they have communication about a particular case. If  
23 you look at the top of the record, there's a case number that  
24 starts typically with an A, sometimes with a C or a P, and that  
25 is a case number that correlates to the actual case that this

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1 is related to. So Government Exhibit 101-2-A is a call log for  
2 all the interactions related to Case Number A-08043- -- I  
3 believe that's 23125. And so we'll match it up to the file for  
4 that case, and in that file will be the application for alien  
5 labor certification, and in that file would be the employer  
6 contact number, phone number, for that file. And what the  
7 witness will explain is that whatever the case number is, the  
8 number they called is the number that's in the employer contact  
9 part of the application, so that would be the number that they  
10 called. All she can testify to is that would be the number  
11 that they called, and whatever interaction they would have had,  
12 they would have recorded here. And it is certainly our job,  
13 later in the case, to show how those phone numbers correspond  
14 to the defendants.

15 But I think these records fall squarely in the  
16 definition of public records. These are, you know -- you know,  
17 Mr. Brill mentioned the drug lab cases, and I think he's  
18 referring to *Melendez-Diaz*, a Supreme Court case.

19 MR. BRILL: Yes.

20 MS. ECHENBERG: Business records are specifically  
21 carved out of that case. I have the case here, and I can find  
22 the cite for you in a moment.

23 But as your Honor mentioned, business records are  
24 themselves reliable because they're prepared in the ordinary  
25 course of business, and so the Supreme Court has decided -- and

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1 the statute is there so that you don't have to call every  
2 single person who might have touched that business record.  
3 That would be, you know, very difficult, and these -- these  
4 records are not testimonial. They are -- what we are putting  
5 them in for is the fact that these records exist, that a person  
6 at the Department of Labor made this record contemporaneous at  
7 that time, and they certainly can cross-examine the witness  
8 about whether she knows if they actually spoke to the actual  
9 Nathan Schwartz, and she'll say she doesn't know.

10 MR. BRILL: One more point, your Honor, to touch on  
11 what Ms. Echenberg just said. The fact that -- we would also  
12 object to this witness being able to say, just without any  
13 other justification, that, well, the number that's in the A  
14 file is the number they would have called. It's not what  
15 number they would have called; it's what number they actually  
16 did call. Those are two different issues. And so I don't  
17 think the witness --

18 THE COURT: The Supreme Court has not eliminated  
19 business records and public records and reports in criminal  
20 cases.

21 MR. BRILL: No, of course not. I understand.

22 THE COURT: All right? So --

23 MR. GREENFIELD: Can I just point out one other thing,  
24 Judge. Some of these documents -- and I have about 15 of  
25 them -- say -- have the entry, "We spoke to Mr. Tischler," or

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1 some of them don't refer to it. They say they didn't make  
2 contact. But a number of the ones that either say they did or  
3 didn't also contain the following entry: "This case is  
4 associated with employer POC that has been implicated in the  
5 Earl David/Jed Philwin investigation. Per instructions from NO  
6 firm team (ph), please audit, verify the job order with DS  
7 Hemingway (ph) and request a notarized affidavit from the  
8 employer stating their knowledge of the application."

9 To me that -- whether this is a business record or not  
10 or it's offered to show that they made contact with  
11 Mr. Tischler, I think that's a hearsay statement then, it's  
12 gratuitous, and doesn't belong. It can certainly be redacted  
13 out of these documents.

14 THE COURT: Wait. Wait.

15 MS. ECHENBERG: Your Honor, if I could address that.

16 THE COURT: Wait. Wait. There's a juror in the room.  
17 Hold on.

18 MS. ECHENBERG: Oh, I apologize.

19 (Pause)

20 THE COURT: Just, first, I found that it's 112-11-A.  
21 Is that the one?

22 MR. BRILL: It's in quite a few of them.

23 MR. GREENFIELD: It's in 110-31-A. It's in about five  
24 or six of them or more.

25 THE COURT: Well, that seems to raise a different

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1 issue.

2 MS. ECHENBERG: Yes. I mean, I think, you know, the  
3 one you're looking at, that call, that note comes before --  
4 well, I mean, this one is particularly interesting. What I was  
5 going to say is that for all of these records, I think with the  
6 exception of 112-11-A, that notation comes after the contact  
7 with Harold Tischler or Nathan Schwartz, and then if you look  
8 at the top of the record, you'll see that those cases were then  
9 denied, and what the Department of Labor witness will explain  
10 is that the confirmation was made, the process was moving  
11 along, and then Department of Labor started an investigation.  
12 She doesn't know the facts of the investigation but she knows  
13 that there was an investigation related to certain files, and  
14 then there would have been additional auditing, and that is why  
15 those cases were denied.

16 In this case, what's very interesting about this one  
17 is that that notation comes first and then you know that this  
18 is one where Harold Tischler withdraws his sponsorship, and  
19 that's because, you know, you notice the date is April 28<sup>th</sup>,  
20 2009. There will be evidence in the case later that in  
21 January of 2009 several people were arrested, Mr. Tischler and  
22 Mr. Schwartz received subpoenas in connection with this case,  
23 and there were search warrants for all of the Earl David law  
24 firm locations. So it is actually relevant that after the case  
25 is being investigated, then all of a sudden Mr. Tischler is no

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1 longer willing to continue to sponsor.

2 It's not for the truth. It goes to the defendants',  
3 you know, state of mind. But on the other records, it comes  
4 after the confirmation, it comes after the relevant piece of  
5 information. And again, it's the ordinary course of their  
6 business is to note in these files when something is being  
7 investigated so that they can do a secondary audit --

8 THE COURT: Right.

9 MS. ECHENBERG: -- of these files.

10 THE COURT: But can't you avoid, you know, the taint  
11 that comes from the reference to Earl David by just striking  
12 that sentence and simply having a per instruction without  
13 reference, please audit, verify the job order, and do this, and  
14 then you have your sequence without, you know, the sort of  
15 guilt by association issue, which obviously we keep cautioning  
16 the jury about.

17 MS. ECHENBERG: Yes, of course, your Honor. Yes, that  
18 makes perfect sense, and we will endeavor to get those  
19 redactions in place. This is our second witness this morning,  
20 so --

21 THE COURT: Mr. Greenfield, does that solve it?

22 MR. GREENFIELD: That's solved. Thank you.

23 THE COURT: All right. Do we finally have all jurors?

24 THE LAW CLERK: Yes.

25 THE COURT: Okay.

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1                   MR. GERZOG: We have some evidentiary issues with  
2 respect to Mr. Grynsztajn, but he's not at least till the third  
3 witness, so we can defer that.

4                   THE COURT: Yes. I think I did communicate yesterday  
5 how strongly I feel, when the jurors are here, to have them in  
6 the box hearing testimony, and we can take up things at the  
7 break, we can take them up at 2:15.

8                   Okay. So we'll bring the jury in.

9                   I just want to remind everybody, the only kind of  
10 liquids you're allowed here is water in bottles, okay? They  
11 spent a lot of money on this building.

12                  (Continued on next page)

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1 (Jury present)

2 THE COURT: Good morning, everyone.

3 THE JURORS: Good morning.

4 THE COURT: I note several of you were a little late  
5 this morning, and I appreciate that the weather was pretty bad  
6 and depending on where you were coming from, there was snow on  
7 the ground, if not rain. I just urge you to try tomorrow and  
8 succeeding days to aim to be here early so that if there are,  
9 you know, any delays, like I encountered last night in the  
10 subway when I left and proceeded to stand for half an hour  
11 between here and 42<sup>nd</sup> Street, you know, let's look to be able  
12 to get started on time.

13 So, anyway, now we're going on to testimony, and the  
14 government's going to call its first witness.

15 Mr. Pastore?

16 MR. PASTORE: The United States calls Faith Campbell.

17 THE LAW CLERK: If you would just remain standing,  
18 raise your right hand.

19 (Witness sworn)

20 THE LAW CLERK: Please state your full name and spell  
21 your last name for the record.

22 THE WITNESS: Faith Campbell, C-A-M-P-B-E-L-L.

23 MR. PASTORE: Your Honor, may I inquire?

24 THE COURT: Please.

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Campbell - direct

1 FAITH CAMPBELL,

2 called as a witness by the Government,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. PASTORE:

6 Q. Good morning, Ms. Campbell.

7 A. Good morning.

8 Q. Can you tell us how you're currently employed.

9 A. Yes, I'm an adjudications officer with Service Center  
10 Operations in Washington, DC.

11 Q. And what organization do you work for?

12 A. U.S. Citizenship and Immigration Services.

13 Q. Is that agency sometimes referred to as C-I-S, or CIS?

14 A. Yes.

15 Q. How long have you been in your current position?

16 A. I've been with Service Center Operations a little over two  
17 weeks.

18 Q. Can you describe what your duties and responsibilities are  
19 at the Service Center.

20 A. Yes. I oversee the I-140 labor certification program for  
21 the Service Center.

22 Q. And when you say I-140, what is that, in general terms?

23 A. That is an immigrant petition for alien worker.

24 Q. And you said you've only been in this position for two  
25 weeks. What were you doing before that?

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Campbell - direct

1 A. I'm an immigration services officer with Texas Service  
2 Center, Level 3.

3 Q. How is it you're assigned to this new post?

4 A. I'm serving a temporary promotion.

5 Q. So in other words, your permanent position is at the Texas  
6 Service Center?

7 A. That's correct.

8 Q. And when we say Texas Service Center, what do you mean, in  
9 general terms?

10 A. That is the service center with U.S. Citizenship and  
11 Immigration Services that processes I-140s.

12 Q. And how long have you been employed at the Texas Service  
13 Center?

14 A. Since November 2004.

15 Q. What are your duties and responsibilities at the Texas  
16 Service Center?

17 A. I adjudicate immigrant petitions and applications, I  
18 conduct training for officers, and I mentor officers as well.

19 Q. What types of training do you conduct for officers?

20 A. I conduct form-specific training, such as I-140s.

21 Q. And you said you've been doing that since about 2004?

22 A. That's correct.

23 Q. Prior to 2004, what were you doing?

24 A. I was a district adjudications officer with the Houston,  
25 Texas district office.

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Campbell - direct

1 Q. Please explain for us the difference between district  
2 adjudications office on the one hand and the Texas Service  
3 Center on the other.

4 A. Sure. A district office conducts interviews for  
5 immigration benefits, whereas a service center does not, and  
6 the service center conducts all of their reviews based on  
7 paper.

8 Q. So when we talk about the adjudications at the district  
9 adjudications office, what types of benefits are we talking  
10 about?

11 A. At a district office we would review applications for  
12 adjustment of status primarily or immigrant petitions for  
13 relatives.

14 Q. And what form or forms would those be submitted on?

15 A. I-485s, which is an application to adjust their status, or  
16 an I-130.

17 Q. What is it that determines what form is to be used? You  
18 mentioned a couple -- I-140s, I-130s, I-485. What determines  
19 that?

20 A. The regulations that we use to adjudicate the form  
21 determines the form.

22 MR. PASTORE: Your Honor, may I approach the witness?

23 THE COURT: Sure.

24 MR. PASTORE: I'm handing the witness what's been  
25 marked for identification as Government's Exhibit 803.

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Campbell - direct

1 Q. Ms. Campbell, do you recognize that?

2 A. Yes.

3 Q. What is it?

4 A. That's the Form I-140.

5 Q. How do you recognize it as such?

6 A. Format and title.

7 Q. And are you familiar, in your training and experience, with  
8 I-140s?

9 A. Yes.

10 Q. And have you personally adjudicated I-140 applications?

11 A. Yes.

12 MR. PASTORE: Government offers 803.

13 MR. GERZOG: Without objection.

14 MR. DONALDSON: No objection.

15 THE COURT: Received.

16 (Government's Exhibit 803 received in evidence)

17 MR. PASTORE: Your Honor, may we publish it to the  
18 jury by displaying it on the screen?

19 THE COURT: Sure.

20 Q. Okay. Ms. Campbell, do you see -- do you have a screen in  
21 front of you there?

22 A. Yes.

23 Q. So obviously feel free to use the screen or the document  
24 that's in front of you.

25 I want to focus first on Part 1 of this document.

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Campbell - direct

1 What information, in general, is called for here?

2 A. This is the employer's information, their name, their  
3 address, their tax ID number or Social Security number, if they  
4 have any.

5 Q. Okay. You said employer. Let's step back for a minute.  
6 Tell us in general how the process works when an employer is  
7 filing an I-140 and why they would be filing an I-140.

8 A. Sure. A petitioner, an employer files an I-140 to hire an  
9 alien for permanent employment in the United States.

10 Q. And is there a process -- what's the first step in that  
11 process?

12 A. Well, the first step, it depends if the job does require a  
13 labor certification. If it does, the petitioner or employer  
14 first has to obtain a labor certification from the Department  
15 of Labor.

16 Q. Are you familiar with how that process works?

17 A. Yes.

18 Q. How are you familiar with how that process works?

19 A. Because several classifications that rely on the I-140  
20 require a labor certification.

21 Q. You mentioned classification. What do you mean by that?

22 A. There are three preferences for an I-140 -- first, second,  
23 and third -- and within those preferences, we refer to those  
24 classifications as such.

25 Q. Okay. So tell us what type of aliens fit into the first

D1g1cib1

Campbell - direct

1 preference.

2 A. First preference will consist of aliens of extraordinary  
3 ability or aliens who are outstanding professors or researchers  
4 or multinational executives or managers.

5 Q. What about the second preference?

6 A. Second preferences are aliens of exceptional ability and  
7 members of the professions who have advanced degrees.

8 Q. And what about third, the third classification?

9 A. Third preferences are professionals, skilled workers, and  
10 other workers.

11 Q. So, for example, a cook or a baker, what classification  
12 would they typically fall into, in your experience?

13 A. Skilled worker.

14 Q. And for which classifications are labor certifications  
15 required?

16 A. A labor certification is required for all third preference  
17 classifications and some second preference classifications.

18 Q. What does it mean if someone has a first preference versus  
19 a third preference?

20 A. A first preference means the alien beneficiary has greater  
21 probability of obtaining a visa in a given fiscal year. They  
22 are higher on the list of priorities.

23 Q. So it's, quite literally, they have a preferred status over  
24 someone who's in the third category?

25 A. That's correct.

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Campbell - direct

1 Q. With respect to these skilled workers, the labor  
2 certification process, what is the first step that's -- that  
3 occurs in that process?

4 A. The petitioner would have to obtain a labor certification  
5 from the Department of Labor indicating that there is no  
6 available U.S. worker.

7 Q. Do you know how they go about doing that?

8 A. The petitioner would file the labor certification, which  
9 was an ETA 750, Part A and B, and it's currently an ETA Form  
10 9089.

11 Q. And is there a sort of shorthand or colloquial version for  
12 what the form is currently called for the Department of Labor?

13 A. We call that just a labor certification, or the labor cert.

14 Q. Okay. Are you familiar with something called the PERM  
15 process?

16 A. Yes.

17 Q. What is that?

18 A. The PERM process is how the Department of Labor currently  
19 reviews labor certification applications.

20 Q. With respect to the actual labor certification that you  
21 just mentioned, under the old system, do you know what was  
22 actually generated when the Department of Labor approved a  
23 certification application?

24 A. The labor certification itself, which was the ETA Part A  
25 and B, would contain a multicolored stamp from the Department

D1g1cib1

Campbell - direct

1 of Labor.

2 Q. And was there any other form generated?

3 A. No.

4 Q. And what color was the certification?

5 A. Was white.

6 Q. What about with the PERM process, any changes?

7 A. Yes, it's a completely different form. It's longer and  
8 captures more information, and it's also on bluish-gray paper.

9 Q. And how are you familiar with these different types of  
10 forms?

11 A. In my course of adjudicating I-140s.

12 Q. And why would you be familiar with labor certifications  
13 when you're adjudicating immigration petitions?

14 A. It's a required piece of evidence for those classifications  
15 that require labor certs.

16 Q. So if the labor cert is missing, can the I-140 be  
17 processed?

18 A. USCIS would issue a request for that evidence.

19 Q. With respect to the I-140, in addition to the actual form  
20 itself, when you're dealing with somebody who's a skilled  
21 worker, this third classification, is there any other  
22 information that must be provided along with the I-140?

23 A. Yes. The petitioner would have to give any proof of  
24 experience that is required by the labor certification and any  
25 proof of educational credentials that's required by the labor

D1g1cib1

Campbell - direct

1 certification, along with proof that the petitioning employer  
2 has the ability to pay the proper wage.

3 Q. Okay. And when we're talking petitioner, is that the alien  
4 or is that the employer?

5 A. That's the employer.

6 Q. Okay. So it's actually the employer who petitions on the  
7 I-140 for an alien, to your understanding?

8 A. Yes.

9 Q. How would an employer show that they had the ability to pay  
10 the proper wage?

11 A. The petitioner can submit its federal income tax returns,  
12 audited financial statements, or annual reports.

13 Q. And in the course of your duties do you rely on those types  
14 of documents?

15 A. Yes.

16 Q. Are there any interviews conducted of the employer?

17 A. No.

18 Q. So it's entirely done on the papers that are submitted; is  
19 that right?

20 A. Correct.

21 Q. With respect to the I-140, I want to go back and look at  
22 the form itself.

23 Let's focus on Part 2 of the I-140. Can you tell us  
24 in general terms what the different boxes that are labeled a  
25 through i mean.

D1g1cib1

Campbell - direct

1 A. Those are the classifications.

2 Q. So in terms of the first preference alien, what would --  
3 what box would be checked?

4 A. A, b, or c.

5 Q. And in terms of the third preference alien, the labor  
6 certifications, what box would be checked?

7 A. E or g.

8 Q. When a person petitions -- an alien petitions as  
9 extraordinary or exceptional ability, do they actually have to  
10 need an employer?

11 A. An alien of extraordinary ability does not have a job  
12 offer. Aliens of exceptional ability may require a job offer.

13 Q. And is it possible that they could just apply for  
14 themselves without a sponsor?

15 A. If a job offer is not required, an alien may self-petition.

16 Q. But for the third preference folks that we're talking  
17 about, is a sponsor always required?

18 A. That's correct.

19 Q. Okay. I want to go now to Part 3 of this form, of the  
20 I-140. Tell us what information is required here.

21 A. That is information about the alien beneficiary -- their  
22 name, their address, their date of birth, A number, if they  
23 have any, Social Security number, and their immigration  
24 information.

25 Q. Okay. And do you see where it says "Date of arrival" in

D1g1cib1

Campbell - direct

1 Part 3?

2 A. Yes.

3 Q. Why might that information be important?

4 A. That might indicate to USCIS the person will later apply  
5 for adjustment of status.

6 Q. So what benefit is actually granted if an I-140 is  
7 approved?

8 A. The only benefit is the person is given a priority date and  
9 a classification, which they can later use to apply for an  
10 immigrant visa abroad or seek adjustment of status.

11 Q. Okay. So let's break that down a little. When you say  
12 adjustment of status, what do you mean by that?

13 A. The beneficiary of this I-140 can file a 485 when his or  
14 her visa becomes available.

15 Q. And if the 485 is granted, what does the alien receive?

16 A. The person will receive a green card or permanent  
17 residence.

18 Q. So does the I-140 entitle someone automatically to a green  
19 card?

20 A. No.

21 Q. You mentioned that there might be folks abroad who would  
22 get a visa.

23 A. That's correct.

24 Q. So what if you are currently in the United States, you're  
25 not abroad, you're already here, and you file an I-140; what's

D1g1cib1

Campbell - direct

1 the benefit?

2 A. There is no benefit. Again, the only benefit is the person  
3 will get a priority date with a preference that he or she can  
4 later use to file for adjustment of status.

5 Q. Okay. So do I understand correctly that they'd be placed  
6 into one of these classifications -- first, second, third?

7 A. Yes.

8 Q. And what's a priority date?

9 A. The priority date is determined by, whether the job offer  
10 required a labor cert, it's that date the labor cert was filed  
11 with the Department of Labor, or if no job offer is required,  
12 it's the date that the I-140 is filed with the agency.

13 Q. And why might a priority date be important?

14 A. It determines if the visa is available for the person's  
15 classification.

16 Q. Let's go to the next page of this form, the I-140.

17           Okay. What information is called for in Part 4?

18 A. That information tells USCIS if they will seek an immigrant  
19 visa abroad or adjustment of status in the United States.

20 Q. Okay. So if we look at the first box, where it says,  
21 "Alien will apply for a visa abroad at the American consulate,"  
22 is that what you were just describing, someone who's outside  
23 the United States looking to enter?

24 A. That's correct.

25 Q. And when would someone check the second box, "Alien is in

D1g1cib1

Campbell - direct

1 the United States and will apply for adjustment of status"?

2 A. That is when the person is actually in the United States.

3 Q. Let's go down to Part 5, which calls for additional

4 information about the petitioner. What information, in

5 general, is called for here?

6 A. That is information about the employer, whether they're an  
7 employer business or an individual, type of business that they  
8 operate, when it was established, how many employees they have,  
9 and information about their income.

10 Q. Focusing on the labor-based certifications or the third

11 preference alien, what information in here would you rely on

12 when you adjudicated I-140s?

13 A. The type of business that they have, the date they were  
14 established, and the number of employees.

15 Q. Why might the type of business, the date it was  
16 established, and the current number of employees be significant  
17 in your adjudication?

18 A. The current number of employees would give us an indicator  
19 about their ability to pay. That's the relevant factor. And  
20 the type of business and the date established, we want to make  
21 sure it's the same employer as listed on the labor  
22 certification.

23 Q. What about gross annual income?

24 A. That's information that would be perhaps relevant to  
25 ability to pay.

D1g1cib1

Campbell - direct

1 Q. And when you say ability to pay, what do you mean by that?

2 A. That is a required piece of evidence that a petitioner  
3 gives us to prove they can pay the proper wage listed on the  
4 labor certification.

5 Q. And so this is in addition to the tax returns or financial  
6 statements that you were discussing before?

7 A. That's what it is.

8 Q. Let's focus now on Part 6. What information is called for  
9 here?

10 A. That's information about the job opportunity, the title,  
11 the job description, and the location where they'll work,  
12 whether it's permanent and full time.

13 Q. And what, if any, information is material when you  
14 adjudicate I-140s?

15 A. The job title and job description, the address where  
16 they'll work, and whether it's permanent and full time.

17 Q. Why would that be significant to your adjudication?

18 A. We need to make sure it's the same job opportunity that was  
19 listed on the labor certification.

20 Q. Let's go to Part 7. Fairly self-explanatory, but what  
21 information is called for here?

22 A. That is information about the alien beneficiary's family  
23 members, spouse, and their children.

24 Q. Let's go to the next page.

25 Okay. What information is called for in Part 8 and 9?

D1g1cib1

Campbell - direct

1 A. Part 8 is the employer certification under penalty of  
2 perjury that all the information is true and correct.

3 Q. And what about Part 9?

4 A. Part 9 is the person's signature who prepared the form.

5 Q. So does the alien sign this form?

6 A. No.

7 Q. Who signs this form?

8 A. Only the employer and any preparer.

9 Q. With respect to the alien who's ultimately seeking the  
10 visa, what information, if any, has to be provided with respect  
11 to that alien, aside from the I-140?

12 A. I'm sorry. Can you repeat the question.

13 Q. Sure. In addition to the I-140, does an alien have to  
14 provide other information associated with their application?

15 A. Application for adjustment of status?

16 Q. No. With the I-140 itself.

17 A. Immigrant petition? No information is provided by the  
18 alien.

19 Q. Are you familiar with something called an experience  
20 letter?

21 A. Yes.

22 Q. What is that?

23 A. That's a letter of employment experience that a petitioner  
24 submits regarding an alien beneficiary's prior experience or  
25 employment.

D1g1cib1

Campbell - direct

1 Q. And when in the process is that submitted?

2 A. That's submitted with the Form I-140.

3 Q. And what information -- how does that factor into your  
4 adjudication process?

5 A. If a labor certification requires certain experience, we  
6 review that letter of experience to determine if that  
7 experience is qualifying.

8 Q. Aside from that letter, do you rely on any other evidence  
9 in terms of the alien's experience?

10 A. We may request additional evidence if it's deemed  
11 necessary.

12 Q. Is there an interview associated with an I-140?

13 A. No.

14 Q. You mentioned adjustment of status before. I'm showing you  
15 what's been marked as Government's 805. Do you recognize that  
16 document?

17 A. Yes.

18 Q. What is it?

19 A. That is the Form I-485.

20 Q. And how are you familiar with it?

21 A. I've adjudicated those.

22 Q. And when did you adjudicate I-485s?

23 A. In my career.

24 Q. And is that at the Texas Service Center or the  
25 adjudications office?

D1g1cib1

Campbell - direct

1 A. Both.

2 MR. PASTORE: Your Honor, government offers 805.

3 MR. GERZOG: Without objection.

4 MR. DONALDSON: No objection.

5 THE COURT: Received.

6 (Government's Exhibit 805 received in evidence)

7 MR. PASTORE: Your Honor, may we publish to the jury?

8 THE COURT: Sure.

9 MR. PASTORE: So let's go ahead and bring up on the  
10 screen Government's 805.11 Q. Okay. If someone files an I-485 and it's approved, what's  
12 the ultimate benefit that they receive?

13 A. The person receives a green card or permanent residence.

14 Q. And does an I-485 always have to be predicated on an I-140  
15 or are there other petitions that could lead to an I-485?16 A. No, there are other petitions or benefits which may lead to  
17 a 485.

18 Q. What information is called for in Part 1 of the form?

19 A. This is biographical information about the applicant, their  
20 name, date of birth, their address, and immigration  
21 information.22 Q. So now we're focused on the alien, not the employer; is  
23 that right?

24 A. That's correct.

25 Q. Okay. Let's scroll down to the next portion of this form,

D1g1cib1

Campbell - direct

1 where it says Application Type, and it's got boxes a through f.  
2 Focusing first on box a, can you tell us, under what  
3 circumstances would this box be checked?

4 A. A would be used by an individual who is the beneficiary of  
5 an immigrant petition such as an I-140.

6 Q. Okay. And under what circumstances would box b be checked?

7 A. Box b would be used by perhaps a derivative spouse or child  
8 of an alien beneficiary of an I-140.

9 Q. So explain what you mean by derivative beneficiary.

10 A. So an alien beneficiary of an immigrant visa petition would  
11 have a spouse or a child who would be afforded accompanying or  
12 following to join benefits on an I-485.

13 Q. So if a wife were to file the I-140, what benefits, if any,  
14 might accrue to the husband?

15 A. The only benefit is the husband is allowed to file a 485 as  
16 an accompanying or following to join beneficiary of his wife.

17 Q. Would the husband have to file an I-140?

18 A. No.

19 Q. So in other words, his benefit derives from the wife's  
20 I-140?

21 A. Yes.

22 Q. Okay. Let's focus on the next portion of this document.

23 Next page, please.

24 Okay. What information is called for in Part 3?

25 A. This is more biographical information about the applicant

D1g1cib1

Campbell - direct

1 and immigration history.

2 Q. Okay. Now if we go to the next page.

3               Okay. You see the series of questions on this page?

4 A. Yes.

5 Q. What is -- what's the purpose of these questions?

6 A. These are questions helping USCIS determine if the  
7 applicant is admissible to the United States.

8 Q. I want to focus in on the first question. What information  
9 is called for there?

10 A. This is information about an applicant's criminal record,  
11 whether they've been arrested or not.

12 Q. If the applicant were to answer yes to any of these  
13 questions, how would that affect their application?

14 A. USCIS would request more evidence to determine if they're  
15 eligible for the benefit.

16 Q. And if the person checks no, what happens?

17 A. USCIS would proceed and would not request any more  
18 evidence.

19 Q. So in your adjudication of I-485, do you rely on the  
20 answers that are given to question 1?

21 A. Yes.

22 Q. Let's focus now on question 10, please, which is a bit  
23 further down the page.

24               What information is called for here?

25 A. This is information to determine if the applicant ever

D1g1cib1

Campbell - direct

1 committed fraud or willful misrepresentation of a material  
2 fact.

3 Q. And how might an applicant's answer to this question affect  
4 their application?

5 A. If they answered yes, they may be inadmissible to the  
6 United States.

7 Q. With respect to this I-485, are there other documents that  
8 are required to be submitted at the same time as the I-485?

9 A. Yes.

10 Q. What are those -- what information is that?

11 A. We require a G-325, which is a biographical piece of  
12 information, and we require medical examination for an  
13 employment-based applicant, we would require proof of the job  
14 offer, and other biographical information, such as their birth  
15 or marriage certificate, and any other miscellaneous  
16 information that's deemed necessary.

17 Q. When you mentioned job offer, what type of proof might you  
18 rely on to determine if the person had a job offer?

19 A. That would be a letter from the intended employer on their  
20 letterhead.

21 Q. From time to time are interviews conducted prior to green  
22 cards being issued?

23 A. Yes.

24 Q. Are they always conducted?

25 A. No.

D1g1cib1

Campbell - direct

1 Q. Under what circumstances might you conduct an interview?

2 A. We might conduct an interview if the applicant entered the  
3 United States illegally or perhaps has a criminal record.

4 Q. And with respect to those interviews, would someone who's  
5 adjudicating an I-485 ever conduct further investigation into  
6 the employer, in other words, the job offer?

7 A. The USCIS officer would not.

8 MR. PASTORE: Your Honor, may I approach the witness?

9 THE COURT: Sure. You don't have to ask.

10 Q. I'm handing you what's been marked for identification as  
11 Government's 802. Do you recognize that document?

12 A. Yes.

13 Q. What is it?

14 A. That's the G-325 biographical information.

15 Q. And how do you recognize it?

16 A. Format and title.

17 Q. And are you familiar with these based on your training and  
18 experience?

19 A. Yes.

20 MR. PASTORE: Your Honor, the government offers 802.

21 MR. GERZOG: No objection.

22 THE COURT: Received.

23 (Government's Exhibit 802 received in evidence)

24 MR. PASTORE: If we could publish it for the jury.

25 (Continued on next page)

D1GLCHI2

Campbell - direct

1 BY MR. PASTORE:

2 Q. So when is this particular form submitted?

3 A. It's submitted in conjunction with a 485.

4 Q. Are you familiar with a section of the immigration law  
5 known as 245(i)?

6 A. Yes.

7 Q. What is that?

8 A. That's the section of law that allows an otherwise  
9 ineligible alien the ability to adjust their status to a lawful  
10 permanent resident.

11 Q. In general, under what circumstances might an otherwise  
12 ineligible alien be able to adjust?

13 A. The individual is the beneficiary of what's called a  
14 grandfathered immigrant visa petition or a labor certification.

15 Q. Okay. When you say grandfathered immigration petition or  
16 labor certification, what do you mean by that?

17 A. That is an immigrant visa petition or labor certification  
18 that was filed prior to the end of the 245(i) period, which is  
19 April 30 of 2001.

20 Q. Okay. So in other words, the labor cert had to be filed  
21 before April 30, 2001?

22 A. Mm-hmm, that's correct.

23 Q. Now, are there other residency requirements associated with  
24 the 245(i)?

25 A. Yes.

D1GLCHI2

Campbell - direct

1 Q. What form, if any, is required if you're applying under  
2 245(i)?

3 A. The supplemental A to form I-485 is required.

4 Q. Handing you what's been marked for identification as  
5 Government Exhibit 806. Do you recognize that?

6 A. Yes.

7 Q. What is it?

8 A. That's the supplemental A to form I-485.

9 Q. How do you recognize it as such?

10 A. Format and title.

11 Q. And are you familiar with these in your training and  
12 experience?

13 A. Yes.

14 MR. PASTORE: Your Honor, government offers 806.

15 MR. GERZOG: No objection.

16 THE COURT: Received.

17 (Government's Exhibit 806 received in evidence)

18 MR. PASTORE: May we publish it?

19 Q. Okay. In addition to the I-485 supplement A, what other  
20 information, if any, must be provided?

21 A. The applicant will submit a \$1,000 penalty fee.

22 Q. And what information is called for in part A of this form?

23 A. This is information about the applicant seeking the  
24 benefit.

25 Q. If we look at part B, what information is called for there?

D1GLCHI2

Campbell - direct

1 A. This is the applicant's indication of how they're eligible  
2 under 245(i).

3 Q. If we look at box B, I am the beneficiary of a visa  
4 petition filed on and after January 15, 1998, and on or before  
5 April 30, 2001, what does that refer to?

6 A. That is an eligibility for 245(i) under the LIFE Act.

7 Q. And what might a visa petition be, is that the I-140 we've  
8 been discussing?

9 A. It may be an I-140 or other immigrant visa petition.

10 Q. And in addition to the supplement A, is there any other  
11 information that's required at this stage?

12 A. Beneficiary of that immigrant visa petition would have to  
13 show he or she was physically present in the United States.

14 Q. You mentioned earlier that sometimes CIS will request  
15 additional information from an applicant.

16 How would that request typically be communicated to  
17 the applicant?

18 A. That will be issued through the mail in a letter.

19 Q. Do you have before you Government Exhibit 801?

20 A. Yes.

21 Q. What is Government Exhibit 801?

22 A. That is a G-28.

23 Q. Under what circumstances would a G-28 be issued or filed, I  
24 should say?

25 A. Whenever the employer submits this in conjunction with

D1GLCHI2

Campbell - direct

1       their I-140 or an applicant submits this in conjunction with  
2       their 485 and they're represented by a legal representative or  
3       an attorney.

4       Q. And how do you recognize this as a G-28?

5       A. Format and title.

6                   MR. PASTORE: Government offers 801.

7                   MR. GERZOG: No objection.

8                   (Government's Exhibit 801 received in evidence)

9                   MR. PASTORE: If we could publish 801 for the jury.

10      Q. So where on this form would the person indicate that  
11       they're being represented by an attorney?

12      A. They would place their information at the top and their  
13       signature at the bottom.

14      Q. In addition to the three preferences that we've been  
15       describing, are you also familiar with a fourth preference  
16       employment-based application?

17      A. Yes.

18      Q. What is that?

19      A. Those are special immigrants.

20      Q. Are you familiar with what type of immigrants might fall  
21       under special immigrants?

22      A. Religious workers, for example.

23      Q. Can you tell us in general terms how does the religious  
24       worker program work in your experience?

25      A. Sure. The 360 is the immigrant visa petition used in those

D1GLCHI2

Campbell - direct

1 proceedings, and it may be filed by the alien or the  
2 petitioning employer to petition for someone to work as a  
3 minister or a religious worker.

4 Q. And the I-360, is this a form that can be relied on to file  
5 a I-485?

6 A. Yes.

7 Q. So this is essentially a path to a green card?

8 A. Yes.

9 Q. Is there another type of religious worker visa?

10 A. There's a nonimmigrant religious worker.

11 Q. What do you mean by nonimmigrant religious worker, what do  
12 you mean by that?

13 A. That is a type of nonimmigrant visa classification for  
14 which the individual can come temporarily into the United  
15 States to work.

16 Q. And can that be the basis of an I-485 getting a green card?

17 A. No.

18 Q. What form is that type of visa filed under?

19 A. It's filed on a form I-129.

20 Q. And are you personally familiar with I-29s and I-360s in  
21 your training and experience?

22 A. Yes.

23 Q. At some point have the procedures for those programs  
24 changed?

25 A. Yes.

D1GLCHI2

Campbell - direct

1 Q. When did that occur?

2 A. 2008.

3 Q. Why did that occur?

4 A. Due to a new regulation which was promulgated by the  
5 agency.

6 Q. Do you know what the basis of the new regulations was?

7 A. A report which indicated fraud in these petitions.

8 Q. Are you familiar with something called an A file or an  
9 alien file?

10 A. Yes.

11 Q. What is that?

12 A. It is an individual's permanent record before the agency.

13 Q. And are those records kept in their regular course of  
14 business?

15 A. Yes.

16 Q. Are the records contained in there made at or near the time  
17 of the transactions by someone with knowledge of the  
18 transactions?

19 A. Yes.

20 Q. And does CIS rely on them in conducting its business?

21 A. Yes.

22 Q. Are you familiar with something called a T file?

23 A. Yes.

24 Q. What is a T file?

25 A. It is a temporary file.

D1GLCHI2

Campbell - direct

1 Q. Why might a T file be created?

2 A. At the time the T file was created because the individual  
3 could not obtain the permanent A file.

4 Q. When you say the individual, who are you referring to?

5 A. That may be someone who works in records or the contractor.

6 Q. And the T file --

7 THE COURT: Excuse me, could you explain that more  
8 clearly.

9 MR. PASTORE: Certainly.

10 Q. When you say someone who is working with it or a  
11 contractor, what do you mean by that?

12 A. If a person files an immigration form and the mail room  
13 cannot obtain their A file, at that time the records or  
14 contractor or official will create a T file for the person.

15 Q. And what ultimately happens to the documents in the T file?

16 A. They're eventually consolidated into the permanent A file.

17 Q. So, for example, if an A file was checked out by another  
18 employee, what would happen to a petition?

19 A. The petition would be housed into the T file until it could  
20 be permanently consolidated into the A file.

21 Q. And are T files also made in the ordinary course of CIS  
22 business?

23 A. Yes.

24 Q. Made at or near the time of the transaction by people with  
25 knowledge of the transactions?

D1GLCHI2

Campbell - direct

1 A. Yes.

2 Q. And does CIS regularly rely on those records in conducting  
3 its business?

4 A. Yes.

5 MR. PASTORE: Your Honor, may I have a moment?

6 No further questions at this time.

7 THE COURT: I was just curious about something.

8 Nothing, I don't think, to do with the case.

9 You were talking, one of the exhibits had a whole  
10 bunch of questions, things like have you ever committed a  
11 crime, do you intend to become a criminal, etc.

12 Do you do fingerprint checks on aliens or just take  
13 their word for it that they've never committed a crime?

14 THE WITNESS: We conduct fingerprint checks on any  
15 applicant who is 14 years and older up to the age of 79.

16 THE COURT: I just wanted to clarify that. That makes  
17 more sense.

18 Is there any cross-examination?

19 Let me just say I think unless counsel agrees to  
20 another order, and it's up to them, that we're just going to  
21 use the order that the defendants have been named in the  
22 indictment. But I want to emphasize to you that that order  
23 doesn't have any meaning. So you're not supposed to assume  
24 most to least or least to most or anything else. Honestly, I  
25 have no idea why the government picked the order that they did.

D1GLCHI2

Campbell - direct

1 So we're just going to begin with Mr. Donaldson.

2 MR. DONALDSON: Yes, Judge, I'll have a few questions.

3 CROSS-EXAMINATION

4 BY MR. DONALDSON:

5 Q. Good morning, Ms. Campbell.

6 A. Good morning.

7 Q. Thank you for coming. I just have a few informational  
8 questions for you. Hopefully you can clear these up for me.

9 You spoke about three preferences, the extraordinary  
10 ability preference -- what was the second one?

11 A. First preference consists of extraordinary ability,  
12 outstanding professors or researchers and multinational  
13 executives or managers.

14 Q. What was the second preference?

15 A. Second preference are aliens of exceptional ability or  
16 members of the professions holding advanced degrees.

17 Q. So there's a difference between extraordinary and  
18 exceptional?

19 A. That's correct.

20 Q. And the third preference was the skilled workers?

21 A. Skilled worker, professionals, and other workers.

22 Q. And I believe you said first, the first preference,  
23 preference one, that's as it says by priority. So if you're in  
24 that section you get moved to the top of the line?

25 A. That's correct.

D1GLCHI2

Campbell - cross

1 Q. And would you agree this is a complicated process for  
2 preference?

3 A. First preference is requires more evidence and is more  
4 complicated.

5 Q. In your experience, that's normally -- who completes those  
6 particular applications, from your experience, the employer,  
7 who does it?

8 A. First preference can be filed by an employer for all three  
9 of those classifications or the alien beneficiary can seek the  
10 alien of extraordinary ability classification.

11 Q. And when the alien does it, they supply the information  
12 themselves?

13 A. That's correct.

14 Q. And the information normally consists of what?

15 A. It consists of lots of different documentation, but it  
16 would have to show that they are at the top of the field and  
17 they have sustained the claim. They have to meet several  
18 criteria.

19 Q. For example?

20 A. Receipt of nationally or internationally recognized prizes  
21 or awards for excellence in the field, for example.

22 THE COURT: Like Nobel prize might do it.

23 Q. Big stuff?

24 A. A Nobel prize might do it.

25 Q. Okay. I'm pretty good but okay.

D1GLCHI2

Campbell - cross

1           So you said something about job offers. What do you  
2 mean by job offers?

3 A. A job offer is required for any classification other than  
4 aliens of extraordinary ability or for those aliens who seek a  
5 waiver of a job offer requirement in the national interest.

6 Q. Just so I'm clear, so there doesn't have to actually be a  
7 job, there just has to be a job offer?

8 A. All of the classifications require a job offer unless  
9 they're in those two which I said, and the alien beneficiary  
10 does not have to work for those employers until he or she  
11 obtains a green card.

12 Q. So it's the -- I just want to be clear on that. So it's  
13 correct to say then that the sponsor or employer doesn't --  
14 strike that -- not strike that, excuse me -- that the applicant  
15 doesn't have to actually work for the employer, just that there  
16 is an offer to work?

17 A. That's correct.

18 Q. And that's okay?

19 A. Correct.

20 Q. And you also said -- I guess it's the same line as the  
21 Court -- when sponsors are employers, sponsor and employer are  
22 the same person?

23 A. Correct.

24 Q. So when you check for these -- strike that again.

25           When the employer sends in or you receive documents

D1GLCHI2

Campbell - cross

1 related to the employer, you accept those documents, you don't  
2 check them?

3 A. When we receive evidence, whether it be concerning the  
4 employer or the alien, we accept it on its face, preponderance  
5 of the evidence.

6 Q. So unlike the part about the crime, you don't do like --  
7 for them you do a fingerprint check; is that correct?

8 A. Correct, for an applicant.

9 Q. To make sure they have a clean record?

10 A. Correct.

11 Q. But when the employer sends in information saying I intend  
12 to offer John Diaz a job, you say okay?

13 A. We accept it on its face.

14 MR. DONALDSON: No further questions.

15 MR. GERZOG: Your Honor, if I can just inquire from  
16 here.

17 CROSS-EXAMINATION

18 BY MR. GERZOG:

19 Q. Ma'am, do you know this gentleman?

20 A. No.

21 Q. Do you have any evidence to give this jury about this  
22 gentleman?

23 A. No.

24 MR. GERZOG: Nothing further.

25 THE COURT: Mr. Brill.

D1GLCHI2

Campbell - cross

1                   MR. BRILL: I am not going to try to walk over  
2 Mr. Schwartz, Judge, if that's okay. So it will be pretty  
3 quick as well.

## 4 CROSS-EXAMINATION

5 BY MR. BRILL:

6 Q. Good morning.

7 A. Good morning.

8 Q. In terms of the form I-140, Government Exhibit 803, do you  
9 have that in front of you?

10 A. Yes.

11 Q. Would it be possible to put that back up on the screen.

12                  Looking at page 3 of that document, if you could, what  
13 type of information is required here?

14 A. On page 3?

15 Q. Yeah.

16 A. Part eight is the employer certification, their signature,  
17 their name, their date, and the daytime telephone number and  
18 email address, if they have any.19                  Part nine is the same information about their  
20 preparer.21 Q. So let's say if part eight is supposed to be filled out  
22 generally by the person who is the person making this petition,  
23 correct?

24 A. The employer, yes.

25 Q. The employer, right. And so if -- so signature of person

D1GLCHI2

Campbell - cross

1 preparing this form if other than above in part nine, what  
2 would you normally expect to find there, who would prepare the  
3 form if it's not the employer, it could be an attorney or  
4 something like that?

5 A. It may be an attorney, a legal representative, or simply  
6 just a preparer.

7 Q. But under eight you're required to have the employer's name  
8 and information, correct?

9 A. That's correct.

10 Q. Is there an actual place -- I'm sorry, there it is,  
11 petitioner signature under eight.

12 What steps are taken to verify that the petitioner,  
13 that is, the employer, is in fact the person who signs this  
14 form?

15 A. USCIS takes the information on its face. We also would  
16 look at a labor certification to see if it's the same employer.

17 Q. So you look at the name of the employer and compare it from  
18 the labor certification to the I-140, right?

19 A. Correct.

20 Q. But you don't take any additional steps -- not you  
21 personally, of course -- take any additional steps to confirm  
22 that the signature is an actual signature of the employer or  
23 employer's representative?

24 A. That's correct.

25 MR. BRILL: Thank you. Nothing further.

D1GLCHI2

Campbell - cross

1 MR. GREENFIELD: I just have a few questions.

2 CROSS-EXAMINATION

3 BY MR. GREENFIELD:

4 Q. Good morning. You mentioned in addition -- could you leave  
5 that form up.

6 You mentioned that there has to be an employer's  
7 signature on the I-140. And you also referenced, I believe,  
8 that you might ask for a letter from the employer at some  
9 further, different time in the process to confirm that they're  
10 offering the job; is that correct?

11 A. Correct.

12 Q. Do both of those documents, when you receive them, do they  
13 end up in the same file, the A file?

14 A. Correct.

15 Q. Does anyone look at the two documents to see if they appear  
16 to be signed by the same person?

17 A. The officer conducting the 485 review would look at that  
18 information.

19 Q. Is that something that's considered in the normal course of  
20 business?

21 A. Yes.

22 Q. And would it be incumbent upon the officer reviewing it to  
23 make some, take some action if the two signatures purported to  
24 be by the same person but clearly were written by different  
25 hands, would he -- would it be incumbent upon that officer to

D1GLCHI2

Campbell - cross

1 take some action?

2 MS. ECHENBERG: Objection. Incumbent?

3 Q. Is that something they're supposed to do if they look at  
4 one signature and they look at another one and clearly they  
5 were written by two different people, are they supposed to do  
6 something?

7 A. If the two signatures are different, the officer would  
8 determine if additional evidence is necessary or further review  
9 is required.

10 Q. And there's also a place on the I-140 for a social security  
11 number, section one, I believe?

12 A. I'm sorry?

13 Q. In section one?

14 A. If the person is an individual, the employer.

15 Q. Right. So it's not asking for both the employer  
16 identification number and the social security number, either  
17 one or the other; is that correct?

18 A. That's correct.

19 MR. GREENFIELD: No further questions. Thank you.

20 MR. PASTORE: Briefly, your Honor.

21 REDIRECT EXAMINATION

22 BY MR. PASTORE:

23 Q. With respect to the job offer, does the job offer have to  
24 be genuine for immigration to approve the petition?

25 A. The job offer must been bona fide from its inception.

D1GLCHI2

Campbell - redirect

1 Q. And when you say bona fide, is there -- who is it that  
2 checks to see whether it's a bona fide job offer?

3 A. The USCIS officer conducting the 485 review and the I-140  
4 review.

5 Q. And how does the Department of Labor figure into this  
6 process?

7 A. The Department of Labor does not evaluate any evidence.

8 Q. For the immigration application?

9 A. Correct.

10 Q. For the labor certification, are you aware of whether any  
11 review is conducted?

12 A. The Department of Labor will conduct a review to determine  
13 if the petitioner attempted to find qualified and available  
14 U.S. workers for that position.

15 Q. Are you aware based on your training and experience what  
16 that review consists of in general terms?

17 A. They review recruitment materials and any other  
18 information.

19 Q. And so when immigration gets -- sorry. Let me rephrase  
20 that.

21 What if anything does immigration receive from the  
22 Department of Labor to confirm that that review has in fact  
23 been done?

24 A. The only thing we have is the certified labor  
25 certification, the ETA form.

D1GLCHI2

Campbell - redirect

1 Q. And with respect to the offer of employment, what's the  
2 purpose of having taxes submitted or financial statements  
3 submitted by the employer to immigration?

4 MR. DONALDSON: Objection. I don't believe that I've  
5 heard that come into evidence about taxes.

6 THE COURT: Go ahead, Mr. Pastore.

7 Q. Just so that we're clear, in addition to the I-140, is  
8 there additional information that's submitted with the I-140?

9 A. The petitioner's proof that they can pay the proffered wage  
10 listed on the labor certification.

11 Q. Remind us what that proof may consist of.

12 A. Federal income tax reports, annual reports, or audited  
13 financial statements.

14 Q. And what's the purpose of reviewing that information?

15 A. We have to make sure that petitioner can pay the wage  
16 listed on the labor certification, that they will not undercut  
17 the wages of U.S. workers.

18 MR. PASTORE: Thank you. No further questions.

19 RECROSS EXAMINATION

20 BY MR. GREENFIELD:

21 Q. So it's possible that there might be a third signature that  
22 would be in that A file of the employer, right, on his tax  
23 return?

24 A. The tax return may contain the signature of an individual  
25 from the employer or their tax preparer.

D1GLCHI2

Campbell - recross

1 Q. And if it purported to have the signature of the employer,  
2 the same person who signed the I-140 and signed the letter  
3 confirming that there was a job offer, would somebody also have  
4 to -- would it be expected, someone or the agent be expected to  
5 at least take some look and see if the three signatures  
6 purporting to be by the same person are in fact different?

7 A. The same person who filed and submitted the 140 may or may  
8 not have signed the tax returns.

9 Q. I understand that. But if it's the same -- my client's  
10 name is Harold Tischler.

11 You don't know Mr. Tischler, correct?

12 A. Correct.

13 Q. If within that A file there was an I-140 that purported to  
14 have Mr. Tischler's signature and a letter confirming  
15 employment offer that purported to have Mr. Tischler's  
16 signature and a tax return showing whatever would be deemed a  
17 sufficient amount of income to pay that wage and that purported  
18 to be signed by Mr. Tischler, but if you look at all three of  
19 them, you see they're written by three different people, would  
20 that be something the agent would be expected to take action  
21 on?

22 MS. ECHENBERG: Objection.

23 THE COURT: I'll allow that.

24 A. The officer will conduct the review and determine if  
25 additional evidence is necessary or if they need to conduct

D1GLCHI2

Campbell - recross

1 further analysis.

2 Q. Based upon what I just --

3 A. Different signatures.

4 MR. GREENFIELD: Thank you. No further questions.

5 MR. PASTORE: Your Honor, one question.

6 REDIRECT EXAMINATION

7 BY MR. PASTORE:

8 Q. The tax returns that are submitted, do they in fact have to  
9 be signed?

10 A. No, they do not.

11 THE COURT: Anything else?

12 I'm afraid we have to send you back to the outside  
13 world.

14 MS. ECHENBERG: The government calls Elissa McGovern.

15 MR. PASTORE: Your Honor, if I may approach to  
16 retrieve the government exhibits.

17 ELISSA McGOVERN,

18 called as a witness by the Government,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. ECHENBERG:

22 MS. ECHENBERG: May I proceed, your Honor?

23 THE COURT: Yes, please.

24 Q. Good morning, Ms. McGovern.

D1GLCHI2

McGovern - direct

1 A. Good morning.

2 Q. Where do you work?

3 A. I work at the U.S. Department of Labor in the Office of  
4 Foreign Labor Certification, which is located in the Employment  
5 and Training Administration of the U.S. Department of Labor in  
6 Washington, D.C.

7 Q. How long have you worked there?

8 A. I have worked there for approximately six years.

9 Q. What is your current title?

10 A. My current title is program manager for the division of  
11 policy within the Office of Foreign Labor Certification.

12 Q. What are your responsibilities in that job?

13 A. I am responsible for all regulations and regulatory  
14 guidance that comes out of the Office of Foreign Labor  
15 Certification. I'm also responsible for paperwork reduction  
16 act forms.

17 Q. And do you conduct training as part of your job  
18 responsibilities?

19 A. I do.

20 Q. And who do you train?

21 A. I have trained our Atlanta National Processing Center, who  
22 handle the permanent labor certifications. I've trained our  
23 Chicago National Processing Center, who handle the temporary  
24 labor certifications.

25 Q. Have you held any other jobs at the Department of Labor?

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McGovern - direct

1 A. Yes. Prior to this job I was the policy and regulatory  
2 manager for the division of policy for the Office of Foreign  
3 Labor Certification.

4 Q. And what were your responsibilities in that job?

5 A. They were very similar to my current responsibilities. I  
6 did training. I wrote regulations or oversaw the drafting of  
7 regulations and all regulatory guidance that the office issues.

8 Q. And did you also conduct similar training in that job?

9 A. Yes, I did.

10 Q. What is the Office of Foreign Labor Certification?

11 A. The Office of Foreign Labor Certification is that office  
12 within the department, the U.S. Department of Labor, that is  
13 responsible for ensuring the secretary's, Secretary of Labor's,  
14 statutory requirements with respect to foreign temporary and  
15 permanent workers seeking to come to the United States.

16 Q. And just generally what are those statutory requirements?

17 A. Well, the Immigration and Nationality Act contains certain  
18 statutory requirements with respect to both temporary and  
19 permanent workers.

20 The admission of a foreign worker on a permanent basis  
21 must be based on an offer of employment. In other words, to  
22 get a green card, they have to come in, they have to be  
23 sponsored by an employer, and the Secretary of Labor has to  
24 certify that that entry of that foreign worker does not  
25 adversely affect the wage and working conditions of U.S.

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McGovern - direct

1 workers who are similarly employed.

2 They also have to make sure that in the permanent  
3 program that there is no U.S. worker who is minimally qualified  
4 for that job.

5 So the Office of Foreign Labor Certification oversees  
6 programs that are designed to ensure that those certifications  
7 take place.

8 Q. And focusing on the permanent program, what's the  
9 difference between the temporary program and the permanent  
10 program?

11 A. As I said, permanent employment in the United States for an  
12 immigrant is based on a job offer from an employer in the  
13 United States. That's a green card.

14 We also oversee temporary entry of various workers  
15 into the United States, again based on the employer's making  
16 certain attestations to us or agreeing to certain obligations.  
17 Those workers come in on a temporary basis either for a few  
18 months or a few years.

19 Q. How does, just in general, how does the Department of Labor  
20 go about certifying that the foreign worker will not adversely  
21 affect the wages or the working conditions of United States  
22 workers and will not take the job of United States worker?

23 A. With respect to the permanent program, since March of 2005,  
24 the certification is done through an attestation-based program.  
25 The employer makes -- undertakes certain obligations. They

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McGovern - direct

1 take certain steps. They do certain kinds of recruitment. It  
2 depends on what kind of a job it is that mandates what kind of  
3 recruitment has to take place.

4 And then certifies, self-certifies to the Department  
5 of Labor that they've done everything, that there's no  
6 minimally qualified U.S. workers who's come forward who's  
7 available and willing to take that job and that they wish to  
8 sponsor a foreign worker for that position.

9 Q. And you mentioned that there are a variety of types of jobs  
10 that this certification process is used for.

11 What types of different jobs?

12 A. It is generally for any kind of a job for which an employer  
13 is seeking a foreign worker. We divide it -- in the permanent  
14 program the type of recruitment that's required is divided  
15 between professional jobs, those jobs that require a bachelor's  
16 degree for entry into the position, or nonprofessional jobs,  
17 jobs that do not require.

18 And we do not look at whether the job fits into any  
19 particular category under the Immigration and Nationality Act.  
20 We simply look at whether the job is professional or not  
21 professional, and we look at the recruitment that's done based  
22 on those types.

23 Q. So focusing briefly on professional jobs, what do you mean  
24 by that?

25 A. Professional jobs are jobs that require a bachelor's

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McGovern - direct

1 degree.

2 Q. And what is the verification process for a professional  
3 job?

4 A. Well, the verification process is the same for both  
5 professional and nonprofessional positions. The only  
6 distinction is the type of recruitment that has to take place.

7 In a professional position, there have to be two print  
8 ads in a newspaper. There have to be at least three other  
9 kinds of recruitment within a menu, if you will, of six or  
10 seven different other kinds, radio ads, or participation in job  
11 fair or additional recruitment through newspapers, websites.  
12 There also has to be a job order placed with the state work  
13 force agency in the state where the job is located for no less  
14 than 30 days.

15 For a nonprofessional position, the state work force  
16 agency job order must be placed for, again, no less than 30  
17 days, and the two newsprint ads and that's it for a  
18 nonprofessional job.

19 Q. And how do you verify that those requirements have been  
20 met?

21 A. We take a certain percentage of those cases and we audit  
22 them prior to certification and we ask to see the newspaper  
23 ads, we ask to see the recruitment, we ask to see a copy of the  
24 job order. We ask to see that they received a prevailing wage  
25 to ensure that U.S. worker wages are on par with the wage

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McGovern - direct

1 that's being offered to that foreign worker.

2 Q. And if the application is not part of that percentage  
3 that's audited, does the Department of Labor just rely on  
4 what's in the application on its face?

5 A. We do.

6 Q. You mentioned that starting in March of 2005, there was an  
7 online process; is that correct?

8 A. That is correct.

9 Q. Prior to March 2005, what was the process?

10 A. Prior to March 2005, we worked through the state work force  
11 agencies. Applications would be received through the state  
12 work force agencies. The state work force agencies --

13 Q. I apologize, let me just clarify my question.

14 There was an online process in March 2005. Was it a  
15 manual process prior to that?

16 A. Yes, it was.

17 Q. And other than it being a manual process, was it  
18 substantively the same type of requirement that was requested?

19 A. It was different in that the recruitment was overseen by  
20 our state work force agencies pursuant to our regulations.

21 Q. And was the recruitment overseen by the state work force  
22 agencies in every case up until March of 2005?

23 A. No. As a result of some changes in laws, the department  
24 and the state work force agencies were flooded with  
25 applications. As a result of this huge number of applications,

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1 there were certain streamlining processes put into place in the  
2 early 2000s to try to get through some of that backlog. We  
3 moved all the cases into two processing centers to try to get  
4 through them all, took them from the states.

5 There's also been in those regulations, the  
6 regulations that existed prior to March of 2005, there was a  
7 procedure for a waiver of recruitment where, similar to what we  
8 have now, an employer could come and say, I've done all my  
9 recruitment, here's what I did, I don't want to have to do it  
10 twice. And those cases would generally be, we call them  
11 reduction in recruitment or waiver of recruitment cases, and  
12 they would be processed very similar to what we have in the  
13 permanent process now, except it was all done manually.

14 Q. So let me just make sure I understand what you're saying.

15 Through the 2000s, there was a certain percentage of  
16 cases, both the cases where the applicant could apply for the  
17 waiver and also the cases that were part of that backlog  
18 reduction, where the Department of Labor was basically relying  
19 on what was in the application on its face with regard to  
20 recruitment?

21 A. That is correct. Any case where there was a reduction in  
22 recruitment and it was accepted to be a reduction in  
23 recruitment case, we would essentially accept what the employer  
24 had to say on that application.

25 Q. And who is it that makes the application to the Department

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McGovern - direct

1 of Labor for this certification?

2 A. It is the employer. It is an employer-based process.

3 Q. And if an employer wants to make an application, how do  
4 they start, currently, how do they start the process?

5 A. If they wish to file, most employers go online and complete  
6 the application online and submit it online. They have to  
7 create an account in our online system and then once that  
8 account has been created and they're authorized to file within  
9 that account, they can file an application.

10 Q. What information needs to be provided for an employer to  
11 set up an account?

12 A. An employer needs to provide certain -- I mean they have to  
13 give us their FEIN.

14 Q. What is an FEIN?

15 A. It's a federal employer ID number, identification number,  
16 that is provided to them when they establish their process by  
17 the IRS, I'm sorry, the Internal Revenue Service.

18 Q. And what other information if any does an employer need to  
19 provide to register in the online system?

20 A. They have to give us an employer contact. They have to  
21 give us certain basic information about their establishment,  
22 their address, who their -- who's in charge.

23 They have to, if we have a question about the  
24 employer, if we can't find either their employer identification  
25 number in any database, we will ask them for certain -- we'll

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McGovern - direct

1 come to them and say, okay, we can't find you. Can you give us  
2 some additional information about yourself? We ask for tax  
3 records, we ask for business, you know, any business records,  
4 utility bills, things that establish that they are indeed a  
5 business, something that they've received from the IRS that  
6 show that the IRS recognizes them as a business.

7 Q. And what's, once an employer has registered in the online  
8 system, what's the next step?

9 A. The next step is they have to do the recruitment. They  
10 have a time frame in which they can do that recruitment. It  
11 has to be within 180 days prior to filing. There is a  
12 mandatory period prior to filing of about 30 days, what we call  
13 the cooling off period, where they have to make sure that they  
14 have interviewed, reviewed the resumes, that they have  
15 interviewed anyone who is minimally qualified or looks  
16 minimally qualified and then submit the application again  
17 within 180 days of initiating that recruitment.

18 Q. What happens after the application is submitted?

19 A. After the application is submitted, the employer contact  
20 information that is on that application will receive a request  
21 to verify that they are sponsoring that foreign worker for  
22 permanent residence through this application.

23 Q. And why is that request made?

24 A. Because even though they've established an account, we need  
25 to make sure that it is indeed the employer who has filed that

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McGovern - direct

1 application and that they are indeed sponsoring that foreign  
2 worker and that the employer contact is aware that their name  
3 is being used to make these attestations so that they  
4 understand the obligations that they have just been committed  
5 to.

6 Q. And how is that first verification transmitted?

7 A. The first verification is transmitted through email.  
8 Because the form is submitted online, we obviously have an  
9 email address from the employer. So we then use that contact  
10 information that's on the application to send an email to the  
11 employer asking them four questions:

12 Are they in fact the contact or do they work for the  
13 employer or are they the employer? Do they know that an  
14 application was submitted on behalf of that employer on behalf  
15 of that foreign worker? Is the job open to U.S. workers? And  
16 are they indeed sponsoring that foreign worker for U.S.  
17 permanent residence?

18 Q. And if those answers -- if that email is responded to, what  
19 happens next?

20 A. The application goes on to be processed.

21 Q. And if that email is not responded to, what happens next?

22 A. The current process is to wait seven days. If no response  
23 to that email is received --

24 MR. BRILL: Objection as to current process.

25 THE COURT: Did the process that you used change

D1GLCHI2

McGovern - direct

1 recently?

2 THE WITNESS: I can speak from what I know from when I  
3 arrived at the department in 2006, which was that email went  
4 out. Some time went by. It has been standardized now to be  
5 seven days. Prior to that time it might have been seven days  
6 or it might have been ten days. Then the phone was picked up  
7 and the employer contact information that's on the form was  
8 used to make a phone call.

9 Q. What happened during that phone call?

10 A. Well, the individual making the phone call would ask the  
11 same questions once they get ahold of the employer contact.

12 Q. And would the response to those questions be recorded  
13 anywhere?

14 A. We would put a summary of -- the person who made the phone  
15 call would put a summary of the phone call in our case notes.

16 Q. And how do you know that?

17 A. Because I've seen the case notes and I've actually been in  
18 Atlanta and overheard some of those phone calls.

19 Q. And if the Department of Labor was unable to reach the  
20 employer either by email or by phone, what happened next?

21 A. Well, if they didn't reach them with the first phone call,  
22 if there was somebody on the other end they'd leave a message.  
23 If they didn't hear back, they'd pick up the phone again. And  
24 usually three, possibility four phone calls would be attempted.  
25 If there was no response at the end of those phone calls, the

D1GLCHI2

McGovern - direct

1 application would be denied and that is the process that  
2 continues. The application is denied.

3 Q. And if the phone call was successful, they were able to  
4 reach the employer and they got the answers they were looking  
5 for, what happened next?

6 A. Then the application gets processed. That would be entered  
7 into our case notes that they reached employer contact and that  
8 they verified sponsorship and then the case would be processed  
9 from that point on.

10 Q. And when you say the case would be processed, generally  
11 what do you mean?

12 A. What I mean is that it's reviewed by a live body, by a  
13 federal analyst, U.S. federal employee who looks at the  
14 application, makes sure that everything is in order -- in other  
15 words, that beauty salon operator does not require a law  
16 degree. That would be a little odd, obviously -- and that it  
17 meets certain regulatory criteria; that if indeed it's a  
18 professional job, they did the professional recruitment, if it  
19 is nonprofessional, that they did the nonprofessional  
20 recruitment; that the prevailing wage was indeed obtained from  
21 either the state work force agency up until 2010, or, after  
22 2010, from our prevailing wage center; and that essentially all  
23 the regulatory obligations had been met before processing the  
24 case.

25 As I said, some cases then are audited because there's

D1GLCHI2

McGovern - direct

1 insufficient information to be able to finish adjudicating the  
2 case.

3 Q. And what happens when a case is audited?

4 A. When a case is audited a letter goes out to the employer  
5 contact asking for certain basic information. We need to see a  
6 copy of the signed application, has to be signed by both the  
7 employer and the agent or attorney, if there is one, plus the  
8 alien.

9 It also, we also request basic information. Give us a  
10 copy of everything you did, give us a copy of the recruitment,  
11 give us a copy of the job order, give us a copy of any resumes  
12 that you may have received as a result of your recruitment.  
13 Did you consider any of those workers? Were any minimally  
14 qualified? We ask certain questions. Sometimes we'll ask very  
15 specific questions based on the nature of the job.

16 Q. So for a case that's not audited, does the Department of  
17 Labor require a signed application?

18 A. No.

19 Q. And for a case that's not audited, does the Department of  
20 Labor require the documents you were just mentioning, tax  
21 records, and other backup documentation of what's included in  
22 the application?

23 A. No, we do not.

24 Q. And if the application meets all of the Department of  
25 Labor's requirements, what happens next?

D1GLCHI2

McGovern - direct

1 A. The application is certified and it is sent back to either  
2 the employer contact or to an agent or attorney if that  
3 employer is represented.

4 Q. And what does that certification look like?

5 A. The certification is a copy of the application. So it  
6 looks very similar to what was submitted, but the difference is  
7 that it will have a signature of the certifying officer on the  
8 application demonstrating that it has been certified. It also  
9 comes back on what we refer to as blue security paper.

10 Q. What is blue security paper?

11 A. It is a special paper we buy from the same people who  
12 supply the U.S. Mint. It is secure in some way that the color  
13 is a way, that the threads in the paper are a certain way.  
14 It's kept under lock and key in our processing centers, and it  
15 is used only with the printers that are allowed to be used for  
16 certification.

17 And it is something that USCIS will look for because  
18 the next step in the process is for that certification to be  
19 filed in support of an immigrant petition for a foreign worker.  
20 Again, the employer files a petition using that certification  
21 as the demonstration that the Secretary has certified that that  
22 job will not adversely affect wages, working conditions of U.S.  
23 workers who are similarly employed, and that there's no U.S.  
24 worker who's minimally qualified for that job.

25 Q. Do you know what that immigration petition is called?

D1GLCHI2

McGovern - direct

1 A. Well, it's called immigrant petition for alien worker or an  
2 I-140.

3 Q. And for each application, how many original certifications  
4 on that secure blue paper exist?

5 A. One.

6 MS. ECHENBERG: Your Honor, may I approach?

7 THE COURT: You don't have to ask unless you were  
8 planning on attacking the witness.

9 MS. ECHENBERG: I do not plan on attacking the  
10 witness.

11 THE COURT: Then just come up.

12 MS. ECHENBERG: And, your Honor, I'm showing the  
13 witness Government Exhibits 101 through 115. I believe you  
14 have a copy at the bench.

15 Q. Ms. McGovern, do you recognize these documents?

16 A. Yes, I do.

17 Q. How do you recognize them?

18 A. They are copies of our case events logs for certain  
19 employers.

20 Q. And what do you mean by that?

21 A. They appear to be copies from our case management system  
22 listing certain employers and their cases probably done -- it's  
23 a case, looks like a case search from all of a particular  
24 employer with the case number, the date received, the type of  
25 submission it was, what its status is, and the name of the

D1GLCHI2

McGovern - direct

1 alien.

2 Q. And is that information reflected, for each employer, is  
3 that information put into your system at or near the time  
4 that's reflected on the document?

5 A. Yes, it is.

6 Q. And is it put into the system by people with knowledge of  
7 those events?

8 A. Yes, it is.

9 Q. And are those records in that database kept in the course  
10 of regularly conducted business of the Department of Labor?

11 A. Yes, they are.

12 Q. And are they made and relied on in the regular course of  
13 business at the Department of Labor?

14 A. Yes, they are.

15 MS. ECHENBERG: The government moves to admit  
16 Government Exhibits 101 through 115.

17 MR. GREENFIELD: No objection.

18 MR. GERZOG: No objection.

19 THE COURT: Received.

20 (Government's Exhibits 101-115 received in evidence)

21 MS. ECHENBERG: Your Honor, may we publish Government  
22 Exhibit 101 to the jury?

23 THE COURT: Sure.

24 Q. So beginning with Government Exhibit 101, in general what  
25 is reflected in this document?

D1GLCHI2

McGovern - direct

1 A. This document appears to be a -- the result of a search for  
2 all cases filed by the employer CFI Framing and Developers.

3 Q. And approximately how many applications are contained in  
4 this document?

5 A. This document looks like it has 35 records.

6 Q. And are you familiar with the system that would produce the  
7 results of a search like this?

8 A. Yes, I am.

9 Q. How does this work in general?

10 A. It's a fairly simple system. To get a search like this,  
11 you'd have to plug in the name of the employer and it would  
12 pull up every case that was filed by that particular employer.

13 Q. And if we could just go through the columns, what is the  
14 first column?

15 A. The first column is the case number. The case number is  
16 created at the time of filing. The A number tells me it was  
17 filed and received in our Atlanta office.

18 Currently all permanent cases go to Atlanta. Prior to  
19 June of 2008, some cases went to our Chicago office. Our  
20 Chicago office now handles only temporary cases. Looks like  
21 these cases would have all been filed in Atlanta. Atlanta  
22 handled, prior to June of 2008, Atlanta handled cases east of  
23 the Mississippi, for jobs that were located east of the  
24 Mississippi.

25 Q. And how is the number that follows the letter generated?

D1GLCHI2

McGovern - direct

1 A. It's generated by the system. If you look, for example,  
2 the first number, you can see that it was generated in 2007 and  
3 it's based on the Julian calendar. So it's 305, which is the  
4 305th day of 2007, and it was received on 11/1/2007. So the  
5 column, for example, that says date received, those are all the  
6 dates that the cases were submitted into the system.

7 Q. And you already explained that the employer for these  
8 applications was CFI Framing and Developers.

9 What are the columns submission type and status?

10 A. Submission type is whether the case was submitted online or  
11 it was mailed in. A small percentage of our cases are through  
12 mail. But the majority of them, I think it's something like  
13 89 percent at this point, are submitted online.

14 The status would tell me whether it was certified or  
15 denied or withdrawn.

16 And the alien name would be the entry of whatever  
17 alien that or foreign worker that application was filed on  
18 behalf of.

19 Q. And what does certified mean?

20 A. Certified means that the department had reviewed the  
21 application and found that the employer had met the basic  
22 regulatory requirements and the case, whether it was audited or  
23 not, was approved.

24 Q. And one of those blue certifications would have been  
25 generated?

D1GLCHI2

McGovern - direct

1 A. Right, a blue certification would have been generated for  
2 each case.

3 Q. And what does denied or withdrawn mean?

4 A. Case is withdrawn is typically withdrawn by the employer  
5 for whatever reason after filing. The most common reason for  
6 withdrawing an application is when we've got multiple  
7 applications because we can only process one application for  
8 one employer with one foreign worker.

9 Denied means that for whatever reason we found that  
10 the case did not meet the regulatory requirements and the case  
11 was denied and a certification was not issued.

12 Q. If you could now just briefly go through the remaining  
13 exhibits starting with 102 and if could you tell me for each  
14 exhibit the number of records, the company name, the date  
15 range, the submission type, and if you could tell me the number  
16 of records first and the company that that exhibit refers to  
17 and then the date range, the earliest record to the latest  
18 record.

19 A. Sure. For 102, the employer is Contour Framing, Inc. It  
20 looks like 36 case records are visible, and the date range is  
21 roughly from July 6, 2006, through May 12 of 2008.

22 Q. And are there certified records in this set?

23 A. Yes, there are, and denied records as well.

24 Q. And if you could just go back to Government Exhibit 101,  
25 please.

D1GLCHI2

McGovern - direct

1 A. Sure.

2 Q. What was the date range for the CFI Framing and Developers  
3 records?

4 A. It looks like the first application was filed on  
5 November 1, 2007, and the last application was filed on  
6 November 4, 2008.

7 Q. And moving on to Government Exhibit 103 -- if it's helpful  
8 if you want to take the clip off and you can just turn them as  
9 you go.

10 A. Probably.

11 Q. Okay. Looking at Government Exhibit 103, how many records  
12 are there?

13 A. Sixty records.

14 Q. And what is the date range for those records?

15 A. Okay. This is for Olympia York Builders and Developers,  
16 Inc., and the date range is from November 19 of 2007, through  
17 January 13, 2009.

18 (Continued on next page)

19

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21

22

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25

D1g1cib3

McGovern - direct

1 BY MS. ECHENBERG:

2 Q. And are there any certified applications in this set?

3 A. There are.

4 Q. Can you go down to Government Exhibit 104.

5 A. Okay. This is for Bliss 9 Limited.

6 Q. How many records are here?

7 A. 14 records.

8 Q. What is the date range?

9 A. Date range is from July 28<sup>th</sup> of 2008 to August 28<sup>th</sup> of  
10 2008.

11 Q. Are there any certified records in this set?

12 A. There are not.

13 Q. Moving on to Government Exhibit 105.

14 A. Mm-hmm. This is for the Sharp Shopper, Inc.

15 Q. And what is the date range of these records?

16 A. These range from July 3<sup>rd</sup>, 2008 to December 9<sup>th</sup>, 2008.

17 There are ten records on the page.

18 Q. And are there any certified records in this set?

19 A. No, there are not.

20 Q. Moving on to Government Exhibit 106.

21 A. This is for Citi Car Van and Truck Rental, Inc. This  
22 employer submitted applications from 10 -- October 23<sup>rd</sup>, 2007  
23 through February 25<sup>th</sup> of 2008. There are 39 records in this  
24 exhibit, and there are cases that are both certified and  
25 denied.

D1g1cib3

McGovern - direct

1 Q. Moving on to the next exhibit, which is Government  
2 Exhibit 107, I believe.

3 A. The employer's name is 5318 16<sup>th</sup> Avenue Enterprises, LLC.

4 The date range is from April 30<sup>th</sup> of 2008 to August 21<sup>st</sup>,

5 2008. No, I take that back. I'm sorry. There's a second  
6 page. November 11<sup>th</sup>, 2008. There are 25 records, and there  
7 are cases that were both certified and denied.

8 Q. Moving on to Government Exhibit 108.

9 A. This shows the records of the employer State to State  
10 Distribution, Incorporated. The applications -- there are nine  
11 records. The date range is from November 11<sup>th</sup> of 2008 to  
12 November 20<sup>th</sup> of 2008. And these cases were either withdrawn  
13 or denied.

14 Q. And moving on to the next exhibit, 110.

15 A. 110 shows the cases that were submitted for -- oops, sorry.  
16 Wrong one.

17 110 is for Vintage Partners. This date range goes  
18 from January 9<sup>th</sup> of 2006 through July 24<sup>th</sup>, 2008. There  
19 are approximate -- there are 60 -- sorry -- 50 records on  
20 these -- on this exhibit, and the cases were both denied and  
21 certified.

22 Q. Moving on to Government Exhibit 111.

23 A. These are the records for the employer Fix Anything  
24 Construction and Plumbing, Inc. There are 43 records. The  
25 dates range from June 26 of 2006 through October 1<sup>st</sup> of 2006.

D1g1cib3

McGovern - direct

1 No, I take that back. I'm sorry. There's more pages. I'm  
2 sorry. The date range ends at February 17<sup>th</sup> of 2008. I'm  
3 sorry. There's still one more page. March 27<sup>th</sup> of 2008 is  
4 the end date of this date range.

5 Q. And so you may have said it, but how many records are there  
6 total for this company?

7 A. 43.

8 Q. And are there certified applications in this set?

9 A. There are certified and denied applications in this set.

10 Q. Moving on to Government Exhibit 112.

11 A. This shows the records for BSD Contracting Corporation.  
12 The date range is from September 24<sup>th</sup> of 2008 through  
13 January 13<sup>th</sup>, 2009.

14 Q. I believe there may be a second page for this record.

15 A. Oh, you're right. I'm sorry. 21 records. 21 records.  
16 That's an -- the last case is an incomplete case.

17 Q. What does that mean?

18 A. That means that the case was created but never submitted.  
19 That's what the T means in front of that case. So it has the  
20 date it was created but not -- it was never received, so you're  
21 going to have -- it's going to be an incomplete.

22 Q. And were any applications certified in this set?

23 A. No applications were certified in this set.

24 Q. Moving on to -- I believe we're on Government Exhibit 113  
25 now.

D1g1cib3

McGovern - direct

1 A. Yes, that's Millennium Developers and General Contractors,  
2 Inc. There are 10 records. They range in date from  
3 November 25<sup>th</sup> of 2008 to January 12<sup>th</sup> of 2009, and there is  
4 both certified and denied cases.

5 Q. And moving on to Government Exhibit 114.

6 A. 114, there are 27 records for Vintage Builders. They range  
7 in date from July 13<sup>th</sup> of 2005 through December 18<sup>th</sup> of  
8 2005, and there are both certified and denied cases.

9 Q. And moving on to the final exhibit in this set, Government  
10 Exhibit 115.

11 A. There are 26 records for L & T Realty, Incorporated. They  
12 range in date from May 7<sup>th</sup>, 2006 through June 24<sup>th</sup> of 2008,  
13 and there are both certified and denied cases.

14 Q. Ms. McGovern, directing your attention to the documents  
15 that are contained in this cart, are you familiar with these  
16 documents?

17 A. Yes, I am.

18 Q. What are they?

19 A. Those are the case records that are the actual case copies  
20 in our -- in our files from the cases that correspond to these  
21 lists.

22 Q. And how do you recognize these documents?

23 A. Because I looked at them.

24 Q. And did you indicate anywhere on them that you had reviewed  
25 them?

D1g1cib3

McGovern - direct

1 A. Yes, I did.

2 Q. What did you do?

3 A. I initialed them the date that I reviewed them.

4 Q. Did you initial each document or just the folders?

5 A. I initialed the folders.

6 Q. And how did you verify that these printed out records are  
7 the Department of Labor's records?

8 A. I went through them, I compared them, I compared some of  
9 them to our case management system enough to make sure that I  
10 was looking at exactly what I thought I was looking at, and  
11 I've seen hundreds of applications that come through our  
12 system.

13 Q. And are these records prepared at or near the time of the  
14 dates reflected in these records?

15 A. Yes, they are.

16 Q. And are they prepared in the ordinary course of the  
17 Department of Labor's business?

18 A. Yes, they are.

19 Q. And are they made and relied on by the Department of Labor  
20 in their regular course of business?

21 A. Yes, they are.

22 MS. ECHENBERG: I have the exhibit numbers here, your  
23 Honor. I'd like to move to admit them all, but perhaps at a  
24 break we can read off all the exhibit numbers, or I can do that  
25 now, if you'd prefer.

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McGovern - direct

1 THE COURT: I'm sorry? Are they by folder or --

2 MS. ECHEBERG: They are -- within each folder, each  
3 file has its own exhibit number. I can read them in as sets,  
4 if that makes sense.

5 THE COURT: Okay.

6 MS. ECHEBERG: Okay. Let me do that.

7 Okay. The government moves to admit Government  
8 Exhibits 101-1 through 101-34, 102-1 through 102-42, 103-1  
9 through 103-60, 104-1 through 104-14, 105-1 through 105-10,  
10 106-1 through 106-39, 107-1 through 107-25, 108-1 through  
11 108-9, 109-1 through 109-12 -- excuse me, there's an additional  
12 109 -- 109-13 through 109-43, 101-1 through 101-50, 111-1 --

13 THE COURT: Do you mean 110?

14 THE WITNESS: I'm sorry. Is that 110?

15 THE COURT: The last one.

16 MS. ECHEBERG: The last one was 110-1 through 110-50.

17 THE COURT: Okay.

18 MS. ECHEBERG: 111-1 through 111-43, 112-1 through  
19 112-20, 113-1 through 113-10, 114-1 through 114-27, and 115-1  
20 through 115-26.

21 MR. BRILL: Does that include the exhibits with the  
22 -A?

23 MS. ECHEBERG: No, it does not. I'm going to do them  
24 after.

25 The government moves to admit those exhibits I just

D1g1cib3

McGovern - direct

1 mentioned.

2 MR. GERZOG: Without objection.

3 THE COURT: They're received.

4 (Government's Exhibits 101-1 through 101-34, 102-1  
5 through 102-42, 103-1 through 103-60, 104-1 through 104-14,  
6 105-1 through 105-10, 106-1 through 106-39, 107-1 through  
7 107-25, 108-1 through 108-9, 109-1 through 109-12, 109-13  
8 through 109-43, 110-1 through 110-50, 111-1 through 111-43,  
9 112-1 through 112-20, 113-1 through 113-10, 114-1 through  
10 114-27, and 115-1 through 115-26 received in evidence)

11 THE COURT: Let me also just tell the jury that you  
12 don't have to memorize these because when you go to deliberate,  
13 you will get a large stack of all the documents that have been  
14 admitted into evidence. So if you've already lost track, don't  
15 worry about it.

16 BY MS. ECHEMBERG:

17 Q. Ms. McGovern, I'm showing you another set of exhibits. Do  
18 you recognize those documents?

19 A. Yes, I do.

20 Q. And what are they?

21 A. These are case notes that, as I said before, we do when  
22 certain actions are taken in cases. We enter that into the  
23 database. The person who enters it is listed, the date that  
24 they took the action and typed in the case note is entered, and  
25 that becomes the record of those activities.

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McGovern - direct

1 Q. And who enters those records?

2 A. Typically it's the person who actually did it, so for  
3 example, if it's a contract employee, for example, our help  
4 desk is manned by contract employees. If a help desk inquiry  
5 comes in, that would go into the system, it would be marked HD,  
6 but the individual who took the -- who did whatever the action  
7 was, took the inquiry, responded to the inquiry, would be  
8 listed, the federal employee who took certain actions would be  
9 listed.

10 Q. And are these records made at or around the time of the  
11 dates reflected in these records?

12 A. Yes, they are.

13 Q. And are they kept in the course of regularly conducted  
14 business at the Department of Labor?

15 A. Yes, they are.

16 Q. And are they made and relied on in the regular course of  
17 the business of the Department of Labor?

18 A. Yes, they are.

19 MS. ECHENBERG: Your Honor, the government moves to  
20 admit the following exhibits: 101-2-A, 101-19-A, 101-30-A,  
21 101-31-A, 102-16-A, 104-11-A, 105-4-A, 107-3-A, 107-4-A,  
22 107-6-A, 107-8-A, 107-16-A, 107-18-A, 107-20-A, 107-21-A,  
23 110-15-A, 110-31-A, 112-6-A, 112-9-A, 112-11-A, 113-6-A, and  
24 113-10-A.

25 MR. BRILL: Voir dire, your Honor?

D1g1cib3

McGovern - direct

1 THE COURT: Sure.

2 VOIR DIRE EXAMINATION

3 BY MR. BRILL:

4 Q. Good morning.

5 A. Good morning.

6 Q. Ms. McGovern, you just -- in response to Ms. Echenberg's  
7 question, you said that the notes in these -- we've been  
8 referring to them as phone logs. Is that what you were  
9 referring to them as well?

10 A. They're not phone logs.

11 Q. Okay.

12 A. They do include phone logs, but they include essentially  
13 activities taken on a case with respect to that case. So if an  
14 e-mail comes into our help desk, that should get reflected in  
15 here.

16 Q. I was just inquiring into what term you use to refer to  
17 them.

18 A. We use the term case notes.

19 Q. Okay. Thank you. You used -- in your response to  
20 Ms. Echenberg as to whether the individual who completes the  
21 action is also the individual who completes the note, you said  
22 typically they do. Is it something that is true in all cases  
23 that the person who does the action makes the note or is it  
24 something that simply is what is supposed to happen?

25 A. No. What I meant was that it's supposed to happen that

D1g1cib3

McGovern - direct

1 everyone who takes an action and types it in is the person who  
2 took that action.

3 Q. Okay.

4 A. I don't stand over all their shoulders every minute of  
5 every day so I can't say that in every case that has always  
6 happened, but that is what is supposed to happen.

7 Q. Okay. So --

8 A. And I have no reason to believe it does not.

9 Q. All right. So I guess the question I have is just -- I  
10 don't mean to split hairs. Is it that the person who takes the  
11 action is supposed to take the note and sometimes they don't or  
12 is it that the person who takes the action may have someone  
13 else take the note for them?

14 A. No, they're not supposed to do that. They are supposed to  
15 do it themselves.

16 Q. All right. So the names that are reflected in one of the  
17 columns in the case notes --

18 A. Mm-hmm.

19 Q. -- are those always the person who took the action in the  
20 column next to that?

21 A. Yes.

22 MR. BRILL: Okay. And as for Mr. Schwartz, I would  
23 have no objection but for, your Honor, the conversation we had  
24 earlier with regard to redactions. I don't know if that's been  
25 done.

D1g1cib3

McGovern - direct

1 MS. ECHENBERG: That has been done.

2 THE COURT: All right. Are there any other objections  
3 or voir dire on these exhibits?

4 MR. GREENFIELD: No, your Honor.

5 MR. GERZOG: No, your Honor.

6 MR. DONALDSON: No, your Honor.

7 THE COURT: Okay. Then they're received.

8 (Government's Exhibits 101-2-A, 101-19-A, 101-30-A,  
9 101-31-A, 102-16-A, 104-11-A, 105-4-A, 107-3-A, 107-4-A,  
10 107-6-A, 107-8-A, 107-16-A, 107-18-A, 107-20-A, 107-21-A,  
11 110-15-A, 110-31-A, 112-6-A, 112-9-A, 112-11-A, 113-6-A, and  
12 113-10-A received in evidence)

13 BY MS. ECHENBERG:

14 Q. Okay. So I'm going to hand you some of these records now.  
15 So, Ms. McGovern, do you recognize what I put in front of you?

16 A. Yes, I do.

17 Q. What are those documents?

18 A. These are our case files with respect to CFI Framing &  
19 Developers.

20 Q. And that was the first set of records you looked at with  
21 relation to Government Exhibit 101?

22 A. That would be correct. This is Government Exhibit 102  
23 through -- 101-2 through 101-34.

24 Q. Is there a 101-1 in there?

25 A. There is.

D1g1cib3

McGovern - direct

1 Q. So it's Government Exhibits 101-1 --

2 A. 101-1.

3 Q. -- through 101-34?

4 A. Yes.

5 Q. And just so we're clear, those are all of the Department of  
6 Labor records that relate to the CFI Framing company; is that  
7 correct?

8 A. Yes.

9 Q. And if I could direct your attention to Government  
10 Exhibit 101-2.

11 MS. ECHENBERG: And Mr. Dinet, if you could put that  
12 up on the screen.

13 For counsel and the court's edification, all of these  
14 documents are contained in binders, but we will also be putting  
15 them up on the screen.

16 Q. So what is the first page of this document?

17 MS. ECHENBERG: And Mr. Dinet, if you could blow that  
18 up.

19 A. The first page of this document is a copy of the cover that  
20 would be in our system that is the actual first piece of paper  
21 that goes out to a certification, so this would actually be put  
22 in the envelope literally like this. This address is what is  
23 shown in the envelope in the window, and that is where -- that  
24 is where the certification would be mailed.

25 Q. And what is the next page of this document?

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McGovern - direct

1 A. I'm sorry?

2 Q. What is the next page in this exhibit?

3 A. The next page is the letter that accompanies the certified  
4 application that says that the application, which the case --  
5 the application number is the -- form number is the Form ETA  
6 9089, it has been certified and is enclosed.

7 Q. And what is an ETA Form 9089?

8 A. It is an application for permanent employment  
9 certification. That is an application that is completed on  
10 line by an employer.

11 Q. That's the application we've been discussing this morning.

12 A. That is correct.

13 Q. And so according to these records, this letter was sent to  
14 the address on this letter at the top?

15 A. That is correct.

16 Q. And what is that address?

17 A. This address is CFI Framing & Developers, care of Nathan  
18 Schwartz, 46 Main Street, Suite 226, Monsey, New York 10952.

19 Q. If you could turn to the next page of this document. What  
20 is that?

21 A. This is a copy of any cc's that go out of the letter  
22 notifying anyone else involved in the application that the  
23 application has been certified.

24 Q. Okay. So does this mean additional copies of that letter  
25 were sent to the same address?

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McGovern - direct

1 A. Probably, yes.

2 Q. And if you could go to the next page.

3 A. That's the carbon copy that goes out.

4 Q. And that's the same letter we looked at, just another copy  
5 was sent --

6 A. It is a copy of the letter, yes.

7 Q. -- to that same address?

8 A. Yes.

9 Q. Okay. And did anything accompany this letter when it was  
10 sent?

11 A. The -- the original certification would go to the first  
12 address.

13 Q. Okay. So in this exhibit, the first letter we looked at  
14 was accompanied by the original certification?

15 A. That's correct.

16 Q. And that was sent to CFI Framing & Developers care of  
17 Nathan Schwartz, 46 Main Street, Suite 226, Monsey, New York?

18 A. That would be correct.

19 Q. I'm showing you what's been marked as Government  
20 Exhibit 3102-A.

21 MR. BRILL: Give me a second.

22 MS. ECHENBERG: Sure.

23 THE COURT: Let me explain to the jury, normally we  
24 would break. We did get started a little late. But the reason  
25 we're still here is because I've been told that an inadequate

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McGovern - direct

1 snack was provided, so we're just going to stay here until  
2 there's a supplementation.

3 BY MS. ECHEBERG:

4 Q. Okay. What else is contained in this file?

5 A. There's a copy of the certification.

6 Q. And is there any other correspondence?

7 A. Other than the courtesy copy that went to the same address,  
8 no, it's just the certification.

9 Q. And so for all of the files that we -- that are in this  
10 cart, is it fair to say that there would be at least one piece  
11 of correspondence -- actually, withdrawn.

12 Having gone through Exhibits -- the 101 set that you  
13 have in front of you, which documents have correspondence  
14 associated with them?

15 A. Any document that was either certified or was audited or  
16 was denied would have correspondence associated with it because  
17 we send out everything. Even though we receive the  
18 applications electronically, we send out audit notifications as  
19 well as denials by mail, in addition to the certifications.

20 Q. So just looking through the documents, if you want to take  
21 a moment to look at them -- actually, if you want to take a  
22 moment to look at all of the 101 exhibits, looking through, how  
23 many of them have correspondence associated with them?

24 A. (Witness reviews exhibits.) All of them have  
25 correspondence associated with them.

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McGovern - direct

1 Q. So all 34 of those exhibits have at least one piece of  
2 correspondence associated with them?

3 A. Yes.

4 Q. And where is that correspondence sent for those 34 records?

5 A. All of them were sent to CFI Framing & Developers, care of  
6 Nathan Schwartz, 46 Main Street, Suite 226, Monsey, New York  
7 10952.

8 Q. And do any of those records have multiple pieces of  
9 correspondence in them?

10 A. Some of them probably do, some of them will have audits,  
11 and then probably -- I know of the files I all -- looked at,  
12 some of them have audits and some of them have denials that  
13 follow the audits, so some of them do have several pieces of  
14 correspondence.

15 Q. If you could look now, you have some of those case notes.  
16 Actually, you don't have them in front of you.

17 MS. ECHENBERG: If we could put up on the screen  
18 Government Exhibit 101-2-A.

19 Q. And do you still have Government Exhibit 101-2 in front of  
20 you?

21 A. Wrong folder. Hold on.

22 MS. ECHENBERG: Actually, Mr. Dinet, could we do  
23 something a little different. Could we put on 101-2. And if  
24 we could turn to the page where the application begins.

25 Q. Ms. McGovern, do you have the page that's up on the screen

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McGovern - direct

1 in front of you?

2 A. Yes, I do.

3 Q. If you -- what is this? What is this document?

4 A. Okay. This is page 1 of the application for permanent  
5 employment certification. As I said before, it's referred to  
6 as ETA 9089. That's the number it was given in the ETA  
7 nomenclature. ETA stands for Employment and Training  
8 Administration, which is where the Office of Foreign Labor  
9 Certification is located within the Department of Labor. And  
10 it is the first page of that application.

11 Q. And how many pages is that application?

12 A. It should be 10 pages. Yup, page 10 of 9 would be the last  
13 page. Of course it's page 10 of 9.

14 Q. And this is the application that is available online?

15 A. This is.

16 Q. This is the application that we've been discussing this  
17 morning.

18 A. Yes, it is.

19 Q. If we could start with Section A.

20 A. Sure.

21 Q. What is Section A?

22 A. Section A refers to a provision in the regulation that  
23 allowed certain applications that -- as I said, we have this  
24 tremendous backlog of applications that have been filed prior  
25 to March 2005. Under certain circumstances this application,

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McGovern - direct

1 the 9089, could be filed using -- linking it to a previous  
2 application filed that were still pending. That application  
3 has to still be pending and it had to meet certain criteria.  
4 It could not have begun recruitment. You could do the  
5 recruitment -- you, the employer, could do the recruitment and  
6 seek to file using this refiling tool as long as the  
7 applications were identical.

8 Q. And why would an employer want to do that?

9 A. Because the backlog was literally 400,000 applications by  
10 March of 2005, and if the employer had not done recruitment  
11 under that application, it was going to be sitting there for  
12 quite a while. If the employer wanted to get the case over  
13 with, they could do the recruitment under the PERM program,  
14 because those regulations had been published in December of  
15 2004, December 27<sup>th</sup>, 2004. They could then seek to file  
16 using it -- using the old case and, most importantly, using the  
17 old priority date that was filed along with that case. A  
18 priority date is the date that the labor certification was  
19 filed, and for a foreign worker, a priority date is extremely  
20 important.

21 Q. Why is that?

22 A. Because that gives them essentially their place in line  
23 when waiting for an immigrant visa, or a permanent residence to  
24 be made available to them. Depending on the kind of job, it  
25 can be years before that date comes up to the top of the line.

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McGovern - direct

1 Q. What is ETA 750?

2 A. The ETA 750 was the form that was previously used in the  
3 permanent labor certification program. It was called an  
4 application for permanent labor certification, to distinguish  
5 it, of course, from this.

6 Q. And what sorts of questions did that contain?

7 A. Similar questions, but it was a much -- it was a different  
8 form. It was only -- it was only a few pages. This one  
9 obviously is many more pages. The 750, which is actually still  
10 used for applications that have nothing to do with PERM  
11 anymore, it contains the name of the employer, what the  
12 employer was seeking in the job, the occupation, the job  
13 opportunity, where it was located, the requirements for that,  
14 whether there was a bachelor's degree was required, what kind  
15 of experience was required, and it also contained the option  
16 of, as I said before, asking for a waiver of recruitment if  
17 they'd done recruitment before they filed the application.

18 Q. Turning back to the ETA 9089 that's on the screen, what is  
19 Section B?

20 A. Section B is the section that asks whether the application  
21 is in support of either a Schedule A or sheepherder occupation.

22 Q. And why is that question asked?

23 A. That question is asked because in certain circumstances the  
24 immigration laws have made certain assumptions with respect to  
25 whether there are actually qualified workers in our country to

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McGovern - direct

1 take those jobs, and so either by statute or by regulation, you  
2 can skip the labor market test that is at the basis of the 9089  
3 process, the permanent labor certification process. Schedule A  
4 is an application that fits within our regulatory criteria for  
5 basically skipping this process.

6 Q. And what jobs are associated with that?

7 A. Right now the only jobs that are part of Schedule A, and  
8 have been since 1990, are aliens of exceptional ability, which  
9 is very similar to an existing CIS -- USCIS/Department of  
10 Homeland Security category, so you get to skip and go straight  
11 to them, or physical therapists or registered nurses, and  
12 that's all that's available for Schedule A.

13 Q. Or, of course, if you're a sheepherder.

14 A. Or, of course, if you're a sheepherder.

15 Q. All right. So if you don't fall into one of those  
16 categories, then you have to use this application and go  
17 through the Department of Labor's process first; is that right?

18 A. That's correct. If you do fit into one of those  
19 categories, you still fill out the application but you give it  
20 to U.S. Citizenship and Immigration Services.

21 Q. Okay. So moving on to Section C.

22 A. Okay. Section C is the employer information. This is  
23 the -- this is where the employer types in information about  
24 itself -- its address, its phone number, the number of  
25 employees, the year it commenced business, its federal employer

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McGovern - direct

1 identification number. The next code is the industry code.  
2 NAICS stands for North American Industry Classification System  
3 code, and that's available -- it's a government coding system  
4 for various industries. And we ask a question about closely  
5 held corporations, partnership or sole proprietorship or  
6 familial relationship, because those are areas where we would  
7 have particular concern. If that question, for example, was  
8 answered yes, we'd be auditing because we wouldn't have enough  
9 information on the basis of the form itself to know whether the  
10 foreign worker unduly influenced that job opportunity so that  
11 it wasn't open to U.S. workers.

12 Q. Turning back to numbers 1 through 4, why do you ask for  
13 that information?

14 A. Well, obviously we need basic information about the  
15 employer, about the fact that it exists, about where it exists  
16 so that we know with whom we are dealing with that we can then  
17 address any correspondence that needs to go to the employer.

18 Q. And does the location of the employer have other  
19 implications to the Department of Labor other than just wanting  
20 to know how to get in touch with the employer?

21 A. Well, it gives us a frame of reference to know that the  
22 employer actually physically exists.

23 Q. And the number of employees, number 5, why is that question  
24 asked?

25 A. We would like to know, for purposes of filing, how many

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1 employees an employer has so that we can know that they have  
2 the ability to pay the salary of this -- of this particular  
3 foreign worker, because one of the elements is to be able to  
4 pay a prevailing wage. For example, if we were to have an  
5 application in our system that says that there were 15 workers  
6 and we had 30 labor certifications on file for that employer,  
7 we might question whether they in fact had the ability to pay  
8 all those foreign workers and whether those jobs were truly  
9 open, whether those jobs in fact existed and they were bona  
10 fide job opportunities.

11 Q. And the FEIN, why do you ask for that information?

12 A. Again, so we can -- we can make sure that that employer  
13 actually exists as an employer in the United States.

14 Q. And the NAICS code, why do you ask for that information?

15 A. We're going to look again to see whether the employer is  
16 in -- doing something -- whether the job opportunity is  
17 reasonably related to the industry in which the employer says  
18 it works. So again, you know, if this were a code that was a  
19 beauty parlor code and the job was for, you know, a building  
20 engineer, we might audit that case because there's a  
21 disconnect.

22 THE COURT: All right. Maybe we should break. I'm  
23 promised that within 10 minutes the rest of the snack will be  
24 here, but I suspect you need a break anyway, and so let's take  
25 our break for half an hour, get back at 12:05.

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McGovern - direct

1           Remember the two rules: Don't talk about the case;  
2 keep an open mind.

3           (Jury excused)

4           (Recess)

5           (Continued on next page)

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McGovern - direct

1 (In open court; jury not present)

2 MS. ECHENBERG: Your Honor, can I ask a question?

3 THE COURT: Sure.

4 MS. ECHENBERG: What is your practice with regard to  
5 stipulations? Read it into the record?

6 THE COURT: Normally that's what happens. Do you have  
7 another idea?

8 MR. PASTORE: Is there a particular time? In other  
9 words, can we do them in the middle of working with a witness  
10 or do you like them read all at once or whatever the -- okay.  
11 Thank you.

12 THE COURT: That's fine.

13 (Continued on next page)

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McGovern - direct

1 (Jury present)

2 THE COURT: Okay. Everyone can be seated.

3 Please continue, Ms. Echenberg.

4 MS. ECHENBERG: Thank you, your Honor.

5 BY MS. ECHENBERG:

6 Q. Ms. McGovern, when we took the break, you were looking at  
7 Government Exhibit 101-2. Do you have that in front of you?

8 A. Yes. Yes, I do.

9 MS. ECHENBERG: And can we bring it up on the screen  
10 as well, please.

11 And if you could turn to -- I think it was the fifth  
12 or sixth page, which was the application itself.

13 Q. And I think we had gone through Section C, so we can move  
14 now to Section D. What is that section?

15 A. That section is the employer contact information. That's a  
16 section that we absolutely have to have. It also has to be  
17 different from the agent or attorney information to make sure  
18 this is not the agent or attorney who's filing the application.  
19 This is the place from which we pull the information to send  
20 correspondence to the employer of record if there is no agent  
21 or attorney.

22 Q. And when you say send correspondence, what do you mean?

23 A. Anything that has to go out, whether it's a certification,  
24 a denial letter, an audit request, additional information  
25 request, would have to go to the attorney or agent of record

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McGovern - direct

1 under our regulations. If there is no agent or attorney of  
2 record, then it goes to the employer, and this is where we get  
3 that information from.

4 Q. And earlier when you talked about verifying the employer  
5 sponsorship through mailing address and phone number, where is  
6 that found on this application?

7 A. That's pulled right from this section.

8 Q. So number 5 would be the e-mail address where that e-mail  
9 you discussed is sent?

10 A. It would be pulled from number 5 and used to send out the  
11 sponsorship verification e-mail.

12 Q. And number 4 would be the phone number that's called if the  
13 e-mail was not responded to?

14 A. If the e-mail is not responded to, that's the phone number  
15 that would be used.

16 Q. If we could move on to page 2, please.

17 If you could explain what Section E and F are.

18 A. Well, E is the section by which we collect the information  
19 regarding the agent or attorney. Again, if the individual  
20 employer is represented by an agent or attorney, that is where  
21 they would list their information. Again, it has to be  
22 different than the employer contact information.

23 F is where we would pull -- we would request that they  
24 provide us with the information that they receive regarding the  
25 prevailing wage. As I said, one of the tenets of the program

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McGovern - direct

1 is they can't be paying the foreign worker less than U.S.  
2 workers, so they have to obtain, through the course of the  
3 application process, a prevailing wage. At the time this  
4 application was filed, it would have been obtained by -- from a  
5 state workforce agency, the state where the job is located.  
6 From January 2010, employers have received that information by  
7 making a request directly to the Office of Foreign Labor  
8 Certification, something called the National Prevailing Wage  
9 Center, which is located in Washington, DC.

10 Q. So let me just make sure I understand. This is the  
11 employer telling the Department of Labor this is the prevailing  
12 wage for this occupation that they're intending to hire this  
13 alien for.

14 A. This is where they tell us this is the prevailing wage that  
15 I got and where I got it from and what it was based upon.

16 In other words, whether it was based on -- the  
17 prevailing wage source, number 6, whether it was based on the  
18 Occupational Employment Statistical Wage Survey, which is  
19 produced by the Bureau of Labor Statistics; or collective  
20 bargaining agreement, that's what CBA stands for; or survey  
21 that the employer actually provides, whether it's a commercial  
22 survey or something that the employer actually provided to the  
23 state workforce agency, saying, here, can you verify that this  
24 is good, this is valid for these purposes; Davis-Bacon Act,  
25 which is what DBA stands for, those are construction wages;

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McGovern - direct

1 Service Contract Act, that stands for the McNamara-O'Hara  
2 Service Contract Act, those are certain government contract  
3 wages; and then a box for other, if there is some other survey  
4 that was used.

5 Q. And why did the Department of Labor need this information?

6 A. Because, again, we have to make sure that this -- this  
7 information is valid and correlates to what the prevailing wage  
8 would be for the position.

9 Q. Moving on to Section G.

10 A. That's the actual wage that's going to be offered, so in  
11 this particular example --

12 MS. ECHENBERG: Mr. Dinet, if you could pull up  
13 Section G, please. And if you could leave Section F up as  
14 well. Thank you.

15 A. So in this particular application, the occupation is  
16 construction carpenter. The prevailing wage that the employer  
17 received from the state workforce agency in 2000 -- October of  
18 2007 was \$16.13 an hour. The wage that is being offered is  
19 \$16.13 an hour. So it is equal to the prevailing.

20 Q. And what is the Department of Labor looking for in  
21 comparing these two sections?

22 A. That it would be equal to or above -- that Section G would  
23 be equal to or above number 5 in Section F.

24 Q. And why is that?

25 A. Because we have to make sure that the individual foreign

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McGovern - direct

1 worker is being paid no less than his similarly situated U.S.  
2 worker colleagues.

3 Q. If we could move on to Section H, please.

4           What is this section?

5 A. This is the job opportunity information. This is  
6 essentially the location where the work is going to be  
7 performed, where -- what the minimum requirements are for the  
8 position, what kind of training is required, if any, what kind  
9 of experience, is there alternate experience that's acceptable;  
10 essentially what are the minimum requirements for the job that  
11 the employer is seeking to fill with a foreign worker.

12 Q. We can move on to Section I, please.

13 A. Section I is the information regarding the recruitment that  
14 was done. As I said before, we divide them into professional  
15 and nonprofessional. We do have the different standards for  
16 college and university teachers because the statute says that  
17 they could be equally qualified rather than minimally  
18 qualified, so we have different standards for them. But  
19 essentially this tells us what kind of an application it is --  
20 is it a professional, is it a college or university teacher, is  
21 it a basic for professional occupations. This gives us the  
22 information as opposed to whether it was professional or  
23 nonprofessional, and as you can see, we do ask them information  
24 about the college and university. This isn't one.

25 Q. If we could go back to the prior page, I believe I skipped

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McGovern - direct

1 over some of Section H; is that right?

2 A. You did a little bit. Some of the additional information  
3 that we seek, a description of the job duties.

4 Q. And why do you seek that information?

5 A. Again, because we have to make sure that this is a bona  
6 fide job opportunity. If the job title is industrial engineer  
7 and the job duties say cut hair, obviously that's going to be  
8 something that's going to trigger our concern. It's got to --  
9 it's got to match the job title, it's got to match the  
10 training. H.11 is also where --

11 THE COURT: Can I just interrupt you for a second.

12 A. Yeah, sure.

13 MS. ECHENBERG: Mr. Dinet, if you could go back one  
14 page. I apologize.

15 Q. Please continue with regard to Section 11.

16 A. Sure. The job duties -- Section 11 is where we list the  
17 job duties. We ask them to describe the job duties. They can  
18 give as much or as little as they wish to give. We will look  
19 at this and compare it against standard occupational  
20 classifications to ensure that, again, it's not something that  
21 is completely out of the ballpark with respect to what is  
22 required for that job, it's reasonably related to the title and  
23 to the minimum requirements.

24 MS. ECHENBERG: And Mr. Dinet, if we could pull up  
25 pages 4 and 5 of this application side by side.

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McGovern - direct

1                   Mr. Dinet, I was referring to the application itself,  
2 pages 4 and 5, so it would be what followed what we were just  
3 looking at.

4 Q. So what is Section I?

5 A. Section I is the recruitment information, what kind of  
6 recruitment was required, and then what kind of recruitment was  
7 actually done. We're asking for the employer to tell us what  
8 they did and when they did it.

9                   MS. ECHEBERG: Wait a moment.

10 Q. So what sort of information are you asking for in this  
11 recruitment information section?

12 A. We are asking for what kind of recruitment was done, were  
13 the two -- were the two ads placed, if so, when were they  
14 placed, what newspaper were they placed in, we ask for  
15 professional occupations, what was the additional required  
16 recruitment that was done, what are the dates that they were  
17 done. Again, remember, I said it's a 180-day window that this  
18 recruitment has to be done, so we're going to ask for the dates  
19 to ensure that the recruitment that was conducted actually fell  
20 within that 180 days.

21 Q. Why is this information important to the Department of  
22 Labor?

23 A. Because we need to know that the employer has conducted the  
24 recruitment to ensure that there is no minimally qualified U.S.  
25 worker who is available and willing to take that job. The only

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McGovern - direct

1 way to do that is to require them to perform certain kinds of  
2 recruitment, and we have given them options, but we have  
3 certain mandatory minimum requirements, primarily in newspaper  
4 and in advertising through the state departments of labor.

5 MS. ECHEBERG: If we could turn now to Section J, and  
6 again, if you could show this over two pages. I don't think  
7 you have -- and then the next page.

8 Q. What is Section J?

9 A. Section J is the alien information. The statute uses the  
10 word alien. We use alien or foreign worker. And it provides  
11 us with certain basic information about the foreign worker --  
12 address, country of citizenship, country of birth, their date  
13 of birth. We ask for the class of admission if they're in the  
14 United States. This one happens to be blank. We ask for their  
15 alien registration number, if they have one, or a I-94 number,  
16 if they have one. Again, that's if they've been admitted to  
17 the United States. They may have an alien number. It's given  
18 by the Department of Homeland Security. They would certainly,  
19 if they were admitted into the United States, have an I-94  
20 number.

21 Q. And am I correct that this application can relate to only  
22 one alien at a time?

23 A. It can only relate to one alien and it is only filed for  
24 one alien foreign worker. It can -- we require one for one.  
25 Since July of 2007, the department has prohibited any

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McGovern - direct

1 substitution of a foreign worker down the road. Prior to that  
2 date you could, as an employer, file an application for Joe  
3 Smith and go through your recruitment for Joe Smith and  
4 actually have a certified application. After that you could  
5 use that application for Jane Doe at -- at the next step of the  
6 filing of the immigrant petition. We prohibited that in July  
7 2007.

8 Q. And turning now to Section K of this application, what is  
9 that section?

10 A. That gives us the alien work experience. The prior Section  
11 J is, does the alien meet the minimum education requirements,  
12 and K would give us their job experience so that we could  
13 compare it to see if they actually met the minimum work  
14 experience that was required by the employer.

15 Q. And turning now to Sections L, M, and N, if you could just  
16 walk through what those sections are.

17 A. Okay. These are the declarations that are made by --  
18 Section L is the foreign worker and Section M is whoever  
19 prepared the application has to actually sign that, sign that  
20 section. They are signed not when they are submitted to us  
21 because we do not currently have the capability to collect  
22 electronic signatures coming into the department. Our  
23 regulations require that the application be signed after it is  
24 certified by, in Section L, the foreign worker, and, in Section  
25 M, by the entity that prepared the document.

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McGovern - direct

1 BY MS. ECHENBERG:

2 Q. So just so we're clear, that blue final certification is  
3 sent out to the employer, it is not signed by the alien until  
4 after it is received by the employer?

5 A. That would be correct.

6 Q. So when it is submitted online to the Department of Labor,  
7 it is unsigned, it looks like this?

8 A. It looks just like this.

9 Q. And turning now to section N.

10 A. Section N is the declaration of the employer. This is  
11 where they're certifying --

12 Q. Can I stop you for one second.

13 MS. ECHENBERG: Mr. Dinet, if you could enlarge from  
14 section N, employer declaration, through the line above U.S.  
15 government agency.

16 Q. I'm sorry. Continue.

17 A. This is the employer declaration. This is the employer's  
18 obligations listed out that they have to meet in order to move  
19 to the next step upon certification.

20 It also allows us to know that they've designated an  
21 agent or attorney to represent them. It also declares under  
22 penalty of perjury that they are attesting that this  
23 information is true and accurate.

24 Q. Again, when the application is submitted online, this  
25 portion of the application is unsigned; is that correct?

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1 A. That's correct.

2 Q. And it's certified without being signed by the employer?

3 A. That is correct.

4 Q. And if we could go down now to section -- one more  
5 question.

6 These points, points one through ten, are these  
7 basically the statutory requirements that you discussed in the  
8 beginning of your testimony?

9 A. They are the statutory or they're either from the  
10 immigration statute or they're from other statutes. For  
11 example, unlawful discrimination by race, creed, or color,  
12 that's not in the immigration statute but it's in our federal  
13 or state statutes.

14 Q. Turning now to section O of this application.

15 A. Section O is the certification itself. This is where the  
16 certifying officer signs the application. The signature is  
17 placed electronically, and the validity period is placed when  
18 the application is certified.

19 Q. If you could turn now to Government Exhibit 101-3.

20 Actually, before you go there, let's stay with 102, 101-2 for a  
21 moment.

22 MS. ECHENBERG: Mr. Dinet, if you could bring up  
23 101-2-A, please.

24 Q. What is this document?

25 A. This document is the case notes for CFI Framing and

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1 Developers, case No. A0804323125.

2 Q. If you could refer back to 101-2 and let me know if that  
3 case number corresponds?

4 A. It does.

5 Q. So these are the case notes for what case?

6 A. For the case that was filed that is now Government  
7 Exhibit 101-2.

8 MS. ECHENBERG: And if you, Mr. Dinet, if you could  
9 highlight numbers one and two. I'm sorry, we're not -- just  
10 leave it as it is.

11 Q. Ms. McGovern, if you can you read from there --

12 A. Sure.

13 Q. -- Nos. 1 and 2?

14 A. There are four records in the case notes.

15 The first record reads as follows: Left voice message  
16 for Nathan Schwartz to confirm sponsorship. It was entered by  
17 Nina Gillis on February 26, 2008.

18 Case note No. 2 is Nathan Schwartz returned my call  
19 and confirmed sponsorship. Also entered by Nina Gillis on  
20 February 26, 2008.

21 Q. And referring back to Government Exhibit 101-2, what number  
22 would have been called?

23 A. It would have been the number that is listed in section D,  
24 the employer contact information, No. 4.

25 Q. What is that phone number?

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1 A. (845) 721-7445.

2 MS. ECHENBERG: And turning now, Mr. Dinet, if you  
3 could, to Government Exhibit 101-19-A.

4 Q. And, Ms. McGovern, you've gone through all the 101 exhibits  
5 in front of the jury to see what the employer name and address  
6 was; is that correct?

7 A. Yes, I have.

8 Q. So if you could pull out 101-19-A, please.

9 A. You mean 101-19?

10 Q. 101-19, yes. And while you're there, if you see 30 and 31,  
11 you might as well grab them too because we're going to come  
12 back to them.

13 Looking at 101-19-A, does that case number correspond  
14 to Government Exhibit 101-19?

15 A. The case number on Government Exhibit 101-19 is  
16 A0802818062. That corresponds to case notes in 101-19-A.

17 Q. And what is the phone number for the employer contact  
18 information in that application?

19 A. Eight, this is section D, No. 4, (845) 721-7455.

20 Q. And if you could again read numbers one and two. You can  
21 just read the text of the message.

22 A. No. 1, left voice message for Nathan Schwartz to give me a  
23 call -- that's obviously a typo.

24 And No. 2, sponsorship confirmed.

25 Q. If you could turn now to Government Exhibit 101-30, and if

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1 you could bring up 101-30-A, and, again, if you could find the  
2 case number and then the employer contact phone number.

3 A. Okay. The case numbers match.

4 Q. And is it the same phone number in the employer contact  
5 section that we had just read?

6 A. Yes, (845) 721-7455.

7 Q. And turning to 101-31-A, again, can you match with 101-31?  
8 Let me know if the case numbers match.

9 A. Case numbers match and the number is the same as the number  
10 that I just read.

11 Q. The phone number is the same?

12 A. Yes.

13 Q. And can you read line 3, please?

14 A. Nathan Schwartz called and verified sponsorship.

15 Q. If you could turn now to Government Exhibit 101-3, please.  
16 If we -- 101-3, please. We'll come back to this.

17 A. Okay.

18 Q. If you could turn now to Government Exhibit -- I need to  
19 bring you more exhibits.

20 So I handed you the Government Exhibits in the 102  
21 series that had been admitted previously.

22 A. Yes.

23 Q. Do you recognize those documents?

24 A. Yes, I do. They are the applications in our records for  
25 Contour Framing, Inc.

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1 Q. And starting with Government Exhibits 1012-1 to 102-16, do  
2 you have those in front of you?

3 A. Yes, I do.

4 Q. And is there correspondence affiliated with all of those  
5 applications?

6 A. Yes, there is.

7 Q. And where is that correspondence sent?

8 A. The correspondence is all sent to Contour Framing, Inc.,  
9 care of Nathan Schwartz, 214 Route 59, Suite 100, Suffern, New  
10 York 10901.

11 Q. And like the other set of exhibits we looked at, do some of  
12 those files include more than one piece of correspondence?

13 A. Yes, they do.

14 Q. But all the files, all 16 of those files include at least  
15 one piece of correspondence to 214 Route 59?

16 A. Yes. They include at least one piece of correspondence to  
17 that address.

18 Q. And if you could turn now Government Exhibit 101-16, excuse  
19 me, 102-16 and if we could bring up on the screen 102-16-A,  
20 please.

21 Before I get to this question, going back to 102-1 to  
22 102-16, do those files include either the cover letter with the  
23 certification that we had looked at earlier or audit letters or  
24 other types of correspondence?

25 A. They contain both letters of certification as well as

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1 denials and audits.

2 Q. Okay. Turning to Government Exhibit 102-16 and looking at  
3 that exhibit, can you compare the case number on that exhibit  
4 to the call note that I put on the screen, 102-16-A?

5 A. Yes. They're identical case numbers.

6 Q. And what is the phone number in the employer contact of  
7 this application?

8 A. (845) 721-7455.

9 Q. And can you read line 1, please?

10 A. Left voice mail.

11 Q. And line 2?

12 A. Recommendation for certification.

13 Q. And now if you could turn to the second folder there which  
14 has, should have Government Exhibits 102-17 to 102-42.

15 Do you have those in front of you?

16 A. I do.

17 Q. And do those Department of Labor files indicate that  
18 correspondence was sent in connection with those files?

19 A. There is correspondence attached to every case here except  
20 for the first case, 101-17.

21 Q. Okay. So putting -- you mean 102-17?

22 A. I'm sorry, 102-17.

23 Q. Putting that one aside, the remainder of the files, where  
24 is the correspondence sent?

25 A. There are a couple of different addresses in here.

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1 Q. And what are those addresses?

2 A. Contour Framing, Inc., care of Jed David Philwin, 17  
3 Battery Place, Suite 323, New York, New York 10004.

4 Contour Framing, Inc., care of Nathan Schwartz, 1274  
5 49th Street, Suite 299, Brooklyn, New York 11219.

6 Sorry, same one.

7 Contour Framing, Inc., care of Zvi M. Samuels, 1301  
8 47th Street, Brooklyn, New York, and that's it.

9 Q. And in connection with those three addresses, is that -- is  
10 any of that correspondence copied to any other addresses?

11 A. 102-18 was copied to Jed David Philwin. 102-19 was copied  
12 to Nathan Schwartz.

13 Q. At what address?

14 A. 1274 49th Street, Suite 299, Brooklyn, New York 11219.

15 102-20 was copied to Jed David Philwin, 17 Battery  
16 Park Place, New York, New York.

17 Q. And I'm actually going to move on. We may come back to  
18 this so you can put those to the side.

19 Going to move on now to the 103 series. What are  
20 those documents?

21 A. These are copies of applications filed by Olympia York  
22 Builders and Developers.

23 Q. And is there correspondence contained in these files?

24 A. Yes, there is.

25 Q. Where is that correspondence sent?

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1 A. It was sent to Olympia York Builders and Developers, care  
2 of Nathan Schwartz, 455 Route 306, Suite 119, Monsey, New York  
3 10952.

4 Q. And so for all or at least most of those 60 files,  
5 correspondence, at least one piece of correspondence is sent to  
6 that address?

7 A. Every piece of correspondence here was sent to that  
8 address. Every piece here in the second binder was sent to  
9 that address, that's 103-25 through 46. And every piece here  
10 was sent to that address.

11 Q. And like the other sets, do some of those files contain  
12 multiple pieces of correspondence that were sent to that  
13 address?

14 A. Yes.

15 Q. I'm showing you what's been the 104 series and the 105  
16 series.

17 If we could start with the 104 series and, again, you  
18 could look at those and let me know where they were sent.

19 A. Okay. This is Bliss 9 Limited. And these were sent to 455  
20 Route 306, Suite 119, Monsey, New York 10952.

21 Q. Is that true for all 14 of the files in that set?

22 A. Yes. They were sent to that address care of Nathan  
23 Schwartz.

24 Q. And just let me ask you a general question so I don't have  
25 to do it every time. I may have covered this, but I want to

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1 make sure the record is clear.

2 For all of these folders that are in the cart and the  
3 ones that you have up in front of you, do they all contain  
4 either denials or approvals or audit letters?

5 A. Yes. They contain either copies of denials or audits or  
6 certifications. In some cases multiple, will have an audit and  
7 a denial, audit, and will have a certification in some cases,  
8 or an audit letter and a denial letter in others.

9 Q. So as you're going through each of those files and you're  
10 referring to correspondence sent, that's generally what's being  
11 sent?

12 A. That's correct.

13 Q. And if there is a certification in that file and there is  
14 that cover page that we showed in the beginning with an  
15 address, is that where the original certification is sent?

16 A. Yes, that's correct.

17 Q. So turning now to Government Exhibit 104-11-A, if you could  
18 again compare the case number for that file with the case  
19 number on the case notes that I put on the screen, which is  
20 104-11-A?

21 A. 0821876048, it's identical.

22 MS. ECHENBERG: And if you could, Mr. Dinet, if you  
23 could go to the next page.

24 Q. If you could read entries one, two, and three on this case  
25 note.

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1 A. Sure. No. 1, called Nathan Schwartz. He was unavailable  
2 so I left him a voice mail message on 6/19/2008.

3 8/21/2008, left Nathan Schwartz a voice mail message.

4 And on 8/28, return call from Nathan Schwartz and he  
5 confirmed sponsorship for Cristina Udvarmelyl. This case has  
6 passed. That means it has passed sponsorship.

7 Q. And looking at Government Exhibit 104-11, what is the  
8 employer contact number associated with this application?

9 A. (845)354-0616.

10 Q. And what is the indication under status in the top right  
11 corner, sorry, on the case note?

12 A. I'm sorry, thank you. Bliss 9 Limited was denied.

13 Q. And if it passed sponsorship, why would it have been  
14 denied?

15 A. There are many reasons why a case would be denied.

16 Q. Can you tell by looking at the case note some indication of  
17 why it might have been denied? If you can.

18 A. There are two pages. Can I see the second page?

19 Q. Sure. Let me ask it a different way.

20 What is case note four?

21 A. Case note four is the request to audit to verify the job  
22 order with the SWA, meaning we would go and ask the state work  
23 force agency, was this job in fact placed, and an affidavit  
24 from the employer stating their knowledge of the application.

25 In other words, we were following up because we had some reason

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1 to believe that there might have been insufficient information  
2 regarding the sponsorship.

3 Q. So am I correct that even after sponsorship was confirmed,  
4 the case was then audited for another reason?

5 A. Cases are audited for many reasons that have nothing to do  
6 with sponsorship.

7 Q. Okay. I believe you have the Government Exhibit 105 set in  
8 front of you?

9 A. Yes, I do. You asked me, by the way, why this case was  
10 denied. The reason for denial was that the employer failed to  
11 respond to an issue, the audit notification letter. There was  
12 no response to the audit.

13 Q. Okay. If you could turn now to the 105 series, please.

14 A. Okay.

15 Q. And if you could look at Government Exhibit 105-4-A. If  
16 you could look at Government Exhibit 105-A. No, if you could  
17 look at 105-4.

18 A. Okay.

19 Q. And if you could bring up on the screen Government  
20 Exhibit 105-4-A.

21 Okay. Again, does the case number for the case file,  
22 Government Exhibit 105-4, match the case number for this case  
23 note?

24 A. Yes.

25 Q. And what is the phone number associated with employer

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1 contact in that application?

2 A. (845)354-0616.

3 Q. If you can now read case notes one, two, and three, please?

4 A. One, the telephone number for Nathan Schwartz, the Sharp  
5 Shopper, Inc., is not in service at this time. Checked the  
6 989, which is an online application, verification for  
7 sponsorship could not be confirmed.

8 No. 2, telephone number (845)354-0616 has been  
9 disconnected at this time. Could not verify sponsorship and  
10 this is an online application.

11 Three days later, spoke with Mr. Nathan Schwartz at  
12 (845)354-0616, who confirmed sponsorship.

13 Q. I'm now handing you the 106 series. Okay. Looking at  
14 these files, where is -- is there correspondence associated  
15 with each file?

16 A. With everything except for the first exhibit in the file,  
17 106-1.

18 Q. So putting that aside, the remainder of the file, which I  
19 believe is 38 files; is that correct?

20 A. Yes.

21 Q. Is there correspondence, at least one piece of  
22 correspondence affiliated with each of those files?

23 A. Yes.

24 Q. And where is that correspondence sent?

25 A. Citi Car Van and Truck Rental, Inc., care of Arnold

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1 Goldenberg, 455 Route 306, Suite 119, Monsey, New York 10952.

2 Q. If you could now look at the 107 series and let me know if  
3 there's correspondence affiliated with those files?

4 A. Yes, there is.

5 Q. And is there correspondence affiliated with all 25 of those  
6 files?

7 A. Yes.

8 Q. And where does that correspondence go?

9 A. This is 5318 16th Avenue Enterprises, care of Harold  
10 Tischler, 4316 17th Avenue, Brooklyn, New York 11204.

11 MS. ECHENBERG: Your Honor, if I could read in a  
12 stipulation at this time.

13 THE COURT: Sure.

14 MS. ECHENBERG: This has been marked as Government  
15 Exhibit S-9 and it has the caption of the case and the case  
16 number.

17 "It is hereby stipulated and agreed by and between the  
18 United States of America by Preet Bharara, United States  
19 Attorney for the Southern District, James Pastore and Janis  
20 Echenberg, assistant United States attorneys, of counsel, and  
21 the below named defendants by and through their attorneys,  
22 that:

23 "1. During the time period from in or about 2003  
24 through in or about 2009, Harold Tischler resided at 4316  
25 17th Avenue, Brooklyn, New York 11219.

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1           "During the time period from in or about 2003 through  
2 in or about 2009, Harold Tischler operated a business located  
3 at 5318 16th Avenue, Brooklyn, New York 11204.

4           "And during the time period from in or about 2003  
5 through in or about 2009, Harold Tischler sent and received  
6 email using the email address harrythemn@aol.com.

7           "It is further stipulated and agreed that this  
8 stipulation may be received in evidence at trial."

9           And it is signed by myself and all counsel.

10          I ask that this stipulation be admitted.

11          MR. DONALDSON: No objection.

12          MR. GERZOG: No objection.

13          THE COURT: Received.

14          (Government's Exhibit S-9 received in evidence)

15          THE COURT: Do we have a copy of it for us?

16          MS. ECHENBERG: Can we publish it to the jury, your  
17 Honor?

18          THE COURT: Sure.

19          Q. Okay. So turning back to Government Exhibit 107, if you  
20 could repeat the address. If you could leave the stipulation  
21 up for one moment, and just repeat the address that all that  
22 correspondence was sent to.

23          A. 4316 17th Avenue, Brooklyn, New York 11204.

24          Q. Okay. And if we could turn to -- okay. We can take that  
25 down.

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1           If we could turn now to the case note which is  
2 107-3-A, and if you could look at Government Exhibit 107-3,  
3 please.

4 A. Yes.

5 Q. What -- and again compare the case note on this, the file  
6 name on this case note to that file that you have in front of  
7 you.

8 A. They are identical.

9           THE COURT: Could you make that a little clearer, is  
10 it possible?

11 Q. Is this 107-3-A?

12           If you could look at page 2 of three. Okay. If you  
13 could read line 2, please.

14 A. Sponsorship confirmed and passed.

15 Q. And what is that notation, if you know?

16           MR. GREENFIELD: Objection. I object. She didn't  
17 make that entry. It's admitted.

18           Is she asking her what the person who wrote that meant  
19 to say by making that entry?

20           THE COURT: Try again.

21 Q. Ms. McGovern, are you familiar with what individuals who  
22 make entries in these case notes are supposed to be recording?

23 A. They are supposed to be recording activities, specifically  
24 in this case, concerning verification of sponsorship.

25 Q. And you've already discussed the verification process which

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1 is first an email and then a phone call if the email is not  
2 responded to, correct?

3 A. That's correct.

4 Q. And is response to an email reflected in these case notes?

5 A. Not on this page.

6 Q. And but in general, would response to that first email be  
7 reflected in the case notes?

8 A. Yes, especially if it was not. In other words, if a live  
9 body had to go forward if the email did not get a response, a  
10 live body would have to make a phone call. That phone call  
11 would be reflected in these case notes.

12 Q. So let me clarify. The phone call would be reflected in  
13 the case notes but the actual response to the email, yes or no,  
14 would not be reflected in the case notes; is that correct?

15 A. That's correct.

16 Q. So based on your -- and you've trained people who enter  
17 these case notes; is that correct?

18 A. I have trained people in Atlanta, including those who enter  
19 case notes.

20 Q. And based on your own training and experience and the  
21 training you've provided, what do you understand that case note  
22 No. 2 to reflect?

23 A. I understand this case note to reflect that someone made a  
24 phone call and that they confirmed sponsorship. The protocol  
25 for them to confirm sponsorship would have been to call the

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1 employer contact information listed on the application.

2 Q. Okay. If we could turn now to Government Exhibit 107-4-A  
3 on the screen and, Ms. McGovern, you could look at Government  
4 Exhibit 107-4.

5 Again, please compare the case number in Government  
6 Exhibit 107-4 to the case number on this case note on the  
7 screen.

8 A. They're identical.

9 Q. And if you could read entry No. 1, please?

10 A. Spoke with Harold Tischler and he confirmed sponsorship for  
11 Marco Suplucha. This case has passed. Again, that means has  
12 passed sponsorship.

13 Q. And looking at Government Exhibit 107-4, what is the  
14 employer contact phone number in that application?

15 A. (718)288-7844.

16 Q. Turning now to Government Exhibit 107-6-A, and if you could  
17 look at Government Exhibit 107-6, Ms. McGovern.

18 A. Okay.

19 Q. If you could again read entry No. 1. I'm sorry. Before  
20 you do that, if you could compare the case number at the top of  
21 this case note to the case number of the exhibit you're looking  
22 at?

23 A. They are identical.

24 Q. And what is the telephone number in that application?

25 A. (718)288-7844.

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1 Q. If you could read case note No. 1, please.

2 A. Spoke with Harold Tischler and he confirmed sponsorship for  
3 Max Bermeo. This case has passed.

4 Q. If you could turn now to Government Exhibit 107-8, and if  
5 we could pull up -8-A, please.

6 I think you know the routine by now, but if you could  
7 compare the case number to the file you have in front of you?

8 A. They are identical.

9 Q. Let me know the employer contact number.

10 A. (718)288-7844.

11 Q. And read entry No. 1, please.

12 A. Spoke with applicant Harold Tischler and he confirmed  
13 sponsorship for Ruslin Malyetick. This case has passed.

14 Q. Turning now to Government Exhibit 107-16. Compare the case  
15 numbers and let us know the phone number.

16 A. Case numbers are identical. Telephone number,  
17 (718)288-7844.

18 Q. And, again, and I think the jury can read the case note.

19 MS. ECHENBERG: And if you could leave it on the  
20 screen, Mr. Dinet.

21 Q. And, Ms. McGovern, if you could turn now to Government  
22 Exhibit 107-18-A. While you're there, if you want to just pull  
23 out 107-18, 107-20 and 107-21-A?

24 MS. ECHENBERG: And, Mr. Dinet, if it's possible to  
25 put those up two or three at a time. I don't know if that's

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possible just to expedite this.

A. Eighteen, 20, and 21?

Q. Eighteen, 20, and 21, yes.

A. Thank you.

Q. So let's start with 18 and 20. If you could just compare the case numbers, if you're able to, 107-18-A and 107-20-A.

A. Okay. Eighteen is identical. Twenty is identical.

Q. Okay. And --

A. The telephone number on both is (718)288-7844.

Q. And if we could just have 107-20-A on the screen.

Is that the phone number for both of them?

A. Yes, it is.

Q. And I would just refer the jury to line No. 1 on 107-20-A which is up on the screen.

And turning now to 107-21-A. If you could again compare the case number and let us know the phone number.

A. Case numbers are identical and the phone number is (718)288-7844.

Q. And refer the jury to line No. 1 on that case note.

I think you have Government Exhibit set 108 and 109 in front of you; is that correct?

A. Yes, I do.

Q. When you're ready. If you just flip through both of those sets, again, just to expedite things, and let me know if those files each contain correspondence and where the correspondence

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1 was sent.

2 A. Okay. 108, State to State Distribution, Inc., care of  
3 Harold Tischler, 4316 17th Avenue, Brooklyn, New York 11204.

4 Q. So all nine of those files contain correspondence that was  
5 sent to that address?

6 A. That is correct.

7 Q. And the 12 exhibits in Government Exhibit 109 set -- sorry.  
8 Let's focus on Government Exhibit 109-1 through 12.

9 A. Mm-hmm.

10 Q. Is there correspondence in those 12?

11 A. There is correspondence in every case.

12 Q. And where is that correspondence sent for those 12?

13 A. 387 Quincy Associates, care of Harold Tischler, 4316, 43-16  
14 17th Avenue, Brooklyn, New York 11204.

15 Q. And turning now to Government Exhibit 109-13 through 43.

16 In this set is there correspondence in each file?

17 A. There is correspondence in most files, most applications.

18 There are some that are not. Probably these are withdrawn  
19 cases.

20 Q. And are there various addresses that this correspondence is  
21 sent to?

22 A. Yes, there are.

23 Q. What are those addresses?

24 A. 17 Battery Place, Suite 323, New York, New York. 110 Wall  
25 Street, 21st floor, New York, New York. And 1301 47th Street,

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1 Brooklyn, New York. Also 43-16 17th Avenue, Brooklyn, New  
2 York.

3 Q. And turning now to 109-22, if we could bring this up on the  
4 screen if that's possible. Let me ask you before we have it on  
5 the screen -- now we have it on the screen.

6 So looking at the first page, what does this page  
7 indicate?

8 A. Again, this is the cover sheet for the letter that would  
9 have gone out to this particular address. This is where the  
10 certification would have been mailed.

11 Q. Is that the letter -- that's the letter that follows that  
12 page?

13 A. Yes.

14 Q. If we could turn to that next page. And was this letter  
15 CCed to any other address?

16 A. It was CCed to the same address, 110 Wall Street, 21st  
17 floor. And then a copy also went to Harold Tischler, c/o 387  
18 Quincy Associates, 43-16 17th Avenue, Brooklyn, New York 11204.

19 Q. Where are you seeing that?

20 A. I'm seeing that on the copy.

21 Q. On how many pages in?

22 A. Page 3, fourth page in.

23 Q. Bring the fourth page up, please.

24 A. Right there.

25 Q. So that's the address at the bottom. That indicates in the

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1 file that a copy of this letter was sent to that address?

2 A. That's correct.

3 Q. But the original certification was sent to the 110 Wall  
4 Street address?

5 A. That would be correct, yes.

6 Q. And in looking through this folder with various addresses,  
7 did you see other indications with that CC address?

8 A. Yes.

9 Q. Do you have 110 in front of you?

10 A. Not yet.

11 Q. Okay. Putting the 110 and 111 series in front of you, and  
12 I will take these away. You could start with pulling out the  
13 110, that first. That's the first set.

14 A. Okay.

15 Q. Okay. Looking now at the Government Exhibit 110 set, let  
16 me be more specific, 110-1 through 21, is there correspondence  
17 in that set?

18 A. Yes.

19 Q. And where is there correspondence for every file?

20 A. Wait a minute. Hold on. Okay, I have 22 through 50.

21 Q. Do you have one through 21?

22 A. No, I do not.

23 Q. Okay. Let's skip that for the moment and I'll look for it  
24 and we'll come back to that.

25 So let's look now at 110-22 to 50. Do you have that

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McGovern - direct

1 in front of you?

2 A. Yes, I do.

3 Q. Okay. And is there correspondence in each one of those  
4 files?

5 A. Yes.

6 Q. And where is that correspondence sent?

7 A. 110 Wall Street, 21st floor, New York, New York 10005.

8 Q. I would refer you now to 110-24 and if we could bring that  
9 up on the screen, please.

10 A. There are two addresses in here. That's one of them.

11 Q. What is --

12 A. The other address is 17 Battery Place, Suite 323, 10004.

13 Q. And in 110-24, are there any other CCs of the  
14 correspondence?

15 A. A CC was sent to Harold Tischler, care of Vintage Partners,  
16 4316 17th Avenue, Brooklyn, New York 11204.

17 Q. And in this set, the 110-22 to 50 set, did you see CCs of  
18 other correspondence in other files to that same address, 4316  
19 17th Avenue? Refer you, for example, to 110-50.

20 A. Yes, 38, 41, 42.

21 Q. Okay. That's fine. We can move on to the 111 set which  
22 should be in front of you.

23 So you should have in front of you 111-1 through 43,  
24 all right?

25 A. Yes.

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1 Q. Focusing first on 111-1 through 32, where does the  
2 correspondence in that file go?

3 A. It goes to Fix Anything Construction and Plumbing, Inc.,  
4 care of Harold Tischler, 4316 17th Avenue, Brooklyn, New York  
5 11219.

6 Q. And 111-33 through 43, where does that correspondence go  
7 and are there other CCs?

8 A. It goes to a couple of addresses: 17 Battery Place, Suite  
9 323. It goes to 1301 47th Street, Brooklyn, New York 11219.  
10 And I think those are the only two addresses in this file.

11 Q. And I would refer you to 111-36. Is that piece of  
12 correspondence CCed to any other addresses?

13 A. CC to Harold Tischler, care of Fix Anything Construction  
14 and Plumbing, 4316 17th Avenue, Brooklyn, New York 11219.

15 Q. If you could turn back now to 110-1 through 21 which I put  
16 in front of you. And, Mr. Dinet, if we could have 110-15-A and  
17 110-31-A up on the screen.

18 Where is the correspondence in this set mailed in the  
19 110-1 to 21?

20 A. Vintage Partners, care of Harold Tischler, 4316  
21 17th Avenue, Brooklyn, New York 11204.

22 Q. And is that for all 32 of those files?

23 A. I have --

24 Q. I'm sorry, all 21, you're correct.

25 A. Twenty-one files in front of me, yes.

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1 Q. In you could turn now to 101-15, excuse me, 110-15, please,  
2 and compare the case note on that file to the case note on --  
3 compare the case number on 110-15 to the case number on the  
4 case note at the top of the screen.

5 A. They are identical.

6 Q. What is the phone number associated with that application?

7 A. (718)854-6622.

8 Q. If you could read case notes one and two, please?

9 A. Left message with Isal to have Mr. Tischler call me back.  
10 And the next day, verified with Mr. Tischler that he is  
11 sponsoring the worker.

12 Q. Turning now to Government Exhibit 110-31, and if could you  
13 compare the case number on the case note at the bottom of the  
14 screen with the case number for that file.

15 A. Okay. I don't have 31 in front of me. I have 21.

16 Q. Because I took it away I think.

17 A. Wait. There's more over here.

18 Q. Okay. It would be the 110 series.

19 A. Yes, okay. Thirty-one.

20 (Continued on next page)

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McGovern - direct

1 BY MS. ECHEBERG:

2 Q. If you could compare the case number for that file with the  
3 case number at the bottom of the screen on that page.

4 A. They're identical.

5 Q. And what is the phone number associated with that file?

6 A. 718-854-6622.

7 Q. If you can read case note 1 there.

8 A. "Contact was made and yes was answered to all questions."

9 Q. Okay. I'm directing your attention now to the 112 series.

10 Where was the correspondence in this set mailed?

11 A. This was mailed to BSD Contracting Corporation, care of  
12 Harold Tischler, 5318 16<sup>th</sup> Avenue, Brooklyn, New York 11204.

13 Q. Is that true for all 20 of those files?

14 A. Yes.

15 Q. Moving on to -- turning now to Exhibit 112-6.

16 MS. ECHEBERG: If we could put 112-6-A and 112-11-A  
17 on the screen, please.

18 Q. And Ms. McGovern, if you could pull out 112-6, 112-11, and  
19 112-9. It's slightly out of order.

20 MS. ECHEBERG: If we could have 112-6 and 112-9 blown  
21 up. Thank you.

22 Q. And Ms. McGovern, if you could compare the case number for  
23 112-6 with the case note on the top and the case number with  
24 112-11 with the case note on the bottom, let me know if those  
25 match.

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1 A. They do.

2 Q. And let me know the phone number that is associated with  
3 those two applications.

4 A. 788 -- I'm sorry -- 718-288-7844.

5 Q. And if you could read, on 112-6, entry 4 and the date,  
6 please.

7 A. "Employer Harold Tischler stated that they are no longer  
8 sponsoring the foreign worker. Sponsorship failed."

9 Q. Okay. And if you could look now at 112-9-A. And is there  
10 a similar notation on the same date for that case note?

11 A. Yes.

12 Q. Okay. Turning now to Government Exhibit 113, please, which  
13 should be in front of you. That's the 113 series.

14 If you could tell me if there is correspondence  
15 associated with those ten files and where that correspondence  
16 was sent.

17 A. There's correspondence associated with all the files and  
18 it's sent to Millennium Developers & General Contractors, Inc.,  
19 care of Harold Tischler, 5318 16<sup>th</sup> Avenue, Brooklyn, New York  
20 11204.

21 MS. ECHEMBERG: Okay. And Mr. Dinet, if you could  
22 pull up 113-6-A and below it, 113-10-A.

23 Q. And Ms. McGovern, if you could look at those corresponding  
24 exhibits, -6 and -10, and again, compare the case numbers to  
25 the case notes.

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1 A. They are identical in both cases.

2 Q. And what is the phone number associated with that  
3 application?

4 A. 718-871-0382.

5 Q. And turning now to Government Exhibit 114, which I believe  
6 the series is in front of you. If you could look first at  
7 114-1 through 20 -- actually, the whole set, 114-1 through 27,  
8 and focus -- if you could pull out 114-10 and -- just tell me  
9 generally where that correspondence goes and then focus on  
10 114-10, please.

11 A. Okay. These were mailed to one -- to Vintage Builders, C/O  
12 Jed Philwin, 110 Wall Street, 21<sup>st</sup> Floor, New York, New York  
13 10005.

14 Q. Is there any cc associated with 114-10?

15 A. There's a cc to Harold Tischler, care of Vintage Builders,  
16 4316 17<sup>th</sup> Avenue, Brooklyn, New York 11204.

17 Q. And looking now at Government Exhibit 115. What company is  
18 that associated with?

19 A. L & T -- I'm sorry -- L & T Realty, Inc. The address is  
20 care of Harold Tischler, 3422 Old Capitol Trail, Suite 694,  
21 Wilmington, Delaware 19808.

22 Some of the L & T cases are care of Jed David Philwin,  
23 17 Battery Place, Suite 323, New York, New York 10005. Those  
24 cases were cc'd to Harold Tischler, care of L & T Realty, Inc.,  
25 3422 Old Capitol Trail, Suite 694, Wilmington, Delaware 19808.

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1 Q. Okay. I'm giving you back an exhibit that you looked at  
2 earlier, Government Exhibit 101-3, and I'm giving you what's  
3 been marked as 3120-A.

4 Do you recognize Government Exhibit 312-A as you  
5 compare it to Government Exhibit 101-3?

6 A. Yes, I do.

7 Q. What is it?

8 A. This is the original or appears to be the original of the  
9 copy that the Department of Labor has in its files of an  
10 application for CFI Framing & Developers.

11 Q. And why does it appear to be the original?

12 A. Because it is on the blue security paper and --

13 Q. How can you tell it's the blue security paper?

14 A. Because I can see the blue, I can see the threads that  
15 we're taught to look for, and it's been signed by the national  
16 certifying officer, William R. Carlson, dated April 2<sup>nd</sup>,  
17 2008.

18 MS. ECHEBERG: Your Honor, may I pass this document  
19 to the jury so they can examine it?

20 THE COURT: Sure.

21 MS. ECHEBERG: I move to admit this exhibit, your  
22 Honor.

23 THE COURT: Are there any objections?

24 MR. BRILL: 3120-A?

25 MS. ECHEBERG: Yes.

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1 MR. BRILL: No objection.

2 THE COURT: Received.

3 (Government's Exhibit 3120-A received in evidence)

4 Q. So just to be clear, this is the original certification  
5 that would have been sent to the address on the first page?

6 A. Yes, that's correct.

7 MS. ECHENBERG: Okay. Just to be clear for the  
8 record, your Honor, the exhibit that was just admitted was  
9 3120-A, in case I misspoke.

10 THE COURT: 3120-A.

11 MS. ECHENBERG: And I'm now passing the witness  
12 1501-2.

13 Q. Do you recognize that document?

14 A. I do. It's a copy of a labor certification that was  
15 submitted. The company is American Girl Fashion. The contact  
16 name for the employer is Avrom Rothenberg.

17 Q. And how do you recognize that document?

18 A. This is one that I actually looked at in the system.

19 Q. And is it -- is that record kept in the regularly conducted  
20 business of the Department of Labor?

21 A. Yes, it would be.

22 Q. And was it made at or around the time reflected on that  
23 document?

24 A. Yes.

25 Q. And is it made and relied on by the Department of Labor in

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1 its regular course of business?

2 A. Yes, it is.

3 MS. ECHEBERG: Government moves to admit Government  
4 Exhibit 1501-2.

5 MR. GERZOG: No objection.

6 MR. DONALDSON: No objection.

7 MR. GREENFIELD: Can I see it?

8 MS. ECHEBERG: Yes.

9 MR. DONALDSON: Your Honor, after he looks at it, I  
10 have one question, one voir dire question, if I can.

11 THE COURT: Could I see a copy of this? Or where  
12 would I find a copy of this?

13 MS. ECHEBERG: I apologize, your Honor.

14 THE COURT: Is it in one of these books?

15 MR. GREENFIELD: I have no objection.

16 MS. ECHEBERG: Your Honor, I'll give you this for  
17 now.

18 THE COURT: Let me just take a look.

19 All right. You can take it.

20 MS. ECHEBERG: So the government moves to admit this  
21 document. And you had voir dire. I apologize.

22 VOIR DIRE EXAMINATION

23 BY MR. DONALDSON:

24 Q. Just one or two questions for you. You said this was  
25 made -- you're testifying that it was made at or about the time

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1 it was received. Do you know when that was?

2 A. It was filed on May 2<sup>nd</sup> of 2006.

3 Q. And this would be via e-mail, via computer? How was it  
4 filed?

5 A. It was submitted online.

6 Q. Do you have any way of knowing who submitted it?

7 A. You mean like an ISP address?

8 Q. Like can you -- the federal government agency or persons  
9 you work for, do you have any way of determining who actually  
10 submitted this particular --

11 A. We can track it to an ISP address, meaning that someone on  
12 a -- entity on some computer entered that case and submitted  
13 that case through that computer, or that computer address.

14 That's as much as we can do.

15 Q. Did you do that?

16 A. I'm sure we did.

17 MS. ECHEBERG: The government moves to admit 1501-2.

18 THE COURT: No objection, so it's received.

19 (Government's Exhibit 1501-2 received in evidence)

20 BY MS. ECHEBERG:

21 Q. Ms. McGovern, I'm going to ask you now a general question  
22 about all of these files that you've looked through. Not the  
23 exhibit we just marked, putting that aside, but all of these  
24 brown folders that we spent the afternoon going through. In  
25 going through these files, did you see any indication that any

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McGovern - cross

1 of this mail was returned to the Department of Labor?

2 A. No.

3 MS. ECHENBERG: I have no further questions at this  
4 point, your Honor.

5 MR. GERZOG: May I?

6 CROSS-EXAMINATION

7 BY MR. GERZOG:

8 Q. Ma'am, can you see this gentleman here in the white shirt  
9 and black glasses?

10 A. Yes.

11 Q. Do you know him?

12 A. No.

13 Q. Have you had any dealings with him?

14 A. No.

15 Q. Let me ask you a couple of questions about your work.

16 Does the nationality of the alien play any role in  
17 whether they get certified either by the Department of Labor or  
18 get a green card from CIS?

19 A. I can't speak to anything the CIS does. We approve or deny  
20 or audit cases based solely on the evidence in front of us.  
21 The nationality has nothing to do with it.

22 Q. Okay. Does the person's ability to speak English play any  
23 role?

24 A. No, unless English is an absolute requirement for the job  
25 and it is reasonably related to the job and it is deemed to be

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1 a requirement for the job. That would be extremely unusual.

2 Usually we'll get jobs that require speaking Spanish or being a  
3 translator of Chinese or things like that, but English --

4 Q. Well, a baker or a plumber or a carpenter doesn't  
5 necessarily require any language, right, so any of those  
6 occupations, that person could be completely nonfluent in  
7 English and still be approved; correct?

8 A. That would be correct.

9 Q. Does the number of related parties have a role? In other  
10 words, when a person is -- comes in, they bring in their family  
11 with them, automatically the family gets green cards, so if you  
12 have 15 children, your wife gets a green card and your 15  
13 children get a green card. Does that have any role in whether  
14 the person gets approved?

15 MS. ECHENBERG: Objection.

16 THE COURT: By the Department of Labor?

17 MR. GERZOG: By the Department of Labor or CIS, if she  
18 knows.

19 THE COURT: Well, I think she should only answer for  
20 the Department of Labor.

21 MR. GERZOG: All right. For the Department of Labor.

22 A. We don't have any knowledge whether the person is married.  
23 Nowhere on the application is that question asked. Nor does it  
24 ask how many children they have.

25 Q. Okay. Does age play a role?

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1 A. No.

2 Q. So a 19-year-old can have sufficient experience if it's  
3 documented, for example?

4 A. If it's documented, yes.

5 Q. And say an 80-year-old who was applying for this -- and  
6 forgive me for saying this, but is likely to retire shortly  
7 after arriving is also someone who can be approved?

8 A. That would be correct, yes.

9 Q. Okay. Now with respect to the job offer, the job offer has  
10 to be a legitimate job offer from a legitimate company;  
11 correct?

12 A. That is correct.

13 Q. But the person does not have to go to work for the company;  
14 correct?

15 A. The Department of Labor would not know whether in fact that  
16 person went to work for the employer after receiving the green  
17 card.

18 Q. But it's not a legal requirement that they do.

19 A. I can't speak to whether it's a legal requirement because I  
20 can only tell you what the Department of Labor requires. We  
21 require that the employer attest that they intend to hire that  
22 person after -- and continue employing them after they receive  
23 the green card.

24 Q. Right. And you have no knowledge of whether or not the  
25 person is obligated in any way to take the job.

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1 A. I do not.

2 Q. Okay. Do you have any knowledge as to what happens if  
3 during the process -- let's say a particular business applies  
4 for a particular alien and they have a downturn then in their  
5 business and can no longer afford to hire the alien. Are they  
6 supposed to notify you that things have changed and they can no  
7 longer afford to hire the alien?

8 A. Only if the application is still in process, because we  
9 would expect that if they were no longer able to sponsor the  
10 alien for permanent residence that they would withdraw the  
11 application.

12 Q. Okay. If your -- if the application had been approved by  
13 your agency and sent on to CIS and then the company found out  
14 that they couldn't afford to hire the applicant anymore,  
15 Department of Labor would have nothing to do with that.

16 A. Not in the permanent program, that is correct.

17 Q. And how specific does the skill have to be? Let's say  
18 somebody is a brilliant mechanic, auto mechanic, and can fix  
19 anything wrong on a Chevrolet car. Can they -- can someone  
20 apply and say, "I run a garage that fixes -- that fix GM cars  
21 in general"? Can that transfer -- that skill transfer that way  
22 or does it have to be specific to Chevrolets, for example?

23 A. We would probably look at that case and audit it because we  
24 would require that the knowledge of Chevrolets be reasonably  
25 related to the performance of the duties and be necessary to

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1 perform those duties in a reasonable manner.

2 Q. Okay. And you said that the process can sometimes take  
3 years. That depends primarily on the priority of the -- of  
4 first, second, third, and then within priority date and so  
5 forth; is that correct?

6 A. The Department of Labor processes its applications without  
7 regard to priorities. The only thing we do is collect the  
8 priority date. That's the date of filing. We don't look at  
9 whether it's any particular preference. We process them  
10 without regard to any preferences. That's a CIS function as to  
11 making those determinations. It is not our function.

12 Q. Is there a typical or average time that you're aware of for  
13 Department of Labor to process an application, assuming there's  
14 not a whole lot of audits and so forth?

15 A. It has varied. Right now it is about six -- anywhere from  
16 60 to 180 days for what we would consider a clean case, one  
17 without audits.

18 MR. GERZOG: Thank you, ma'am.

19 CROSS-EXAMINATION

20 BY MR. BRILL:

21 Q. I'm going to go over to the podium.

22 Hello again.

23 A. Hi.

24 Q. I'm Peter Brill. I represent Nathan Schwartz. I assume  
25 that other than seeing his name in certain documents, you've

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1 never spoken to him directly; correct?

2 A. That is correct.

3 Q. Never met him before?

4 A. No.

5 Q. Let's just start up with a couple of straightforward  
6 questions.

7 Are all of the documents in the binders that were  
8 moved into evidence -- the documents you've been referring to  
9 are the same documents -- are those all what you referred to as  
10 reduction in recruitment cases?

11 A. No.

12 Q. So is there a way to differentiate which ones are reduction  
13 in recruitment cases and which ones aren't?

14 A. None of these are reduction in recruitment cases. They're  
15 all filed under the PERM program, which means they are similar  
16 to reduction in recruitment cases. They have all had the  
17 recruitment done up front prior to filing.

18 Q. Okay. So they fall under the same concept that there's  
19 somewhat less oversight of the program, that most of the  
20 certification is left to the employer at the front end;  
21 correct?

22 A. The activity is left to the employer at the front end.

23 Q. Right.

24 A. The employer makes an attestation, a series of attestations  
25 that say they've done the recruitment. We look behind a number

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McGovern - cross

1 of those to ensure that in fact that recruitment was done  
2 and -- and either certify or deny based on that information.

3 Q. Now as for the process that would have happened in the PERM  
4 cases, unless there was some glaring issue or problem in the  
5 case that would have led to a further audit, so long as the  
6 employer responds to the e-mail, that essentially, the default  
7 position of the Department of Labor would be to approve that or  
8 certify that?

9 A. No.

10 Q. Okay.

11 A. No, not necessarily. We are very clear when we published  
12 the 2004 regulation that we would select a certain number just  
13 randomly to audit those cases even if they looked perfectly  
14 normal and there was no issue that would cause us to audit it.

15 Q. Okay. So maybe by putting it this way: If they weren't  
16 subject to a random audit or if there weren't some glaring  
17 error, generally the alien would be certified?

18 A. I'm not sure what you mean by glaring error.

19 Q. Well, error that would give rise to a further investigation  
20 by the Department of Labor.

21 A. Yes, that is correct.

22 Q. Okay. You mentioned a term and you used it two different  
23 ways. I just want to be clear. You said "employer contact  
24 information" and then you said "employer contact." And so I  
25 guess you could read that phrase two different ways. When you

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were using the phrase, did you mean to say that the information is provided in the documents for a contact for the employer or is it the employer contact information, if you follow me?

A. The employer contact is the individual listed in the employer contact information.

Q. That's what I want.

A. The employer contact information is the sum total of what's contained in that Section D.

Q. Exactly. So the person who is -- well, who can certify for an employer in these applications, does it have to be the employer -- who signs these applications, the employer or the employer contact?

A. The employer signs the application.

Q. So an attorney or representative of the --

A. Cannot.

Q. Cannot. Okay.

A. Except as a preparer.

Q. And ultimately you would then at some point need an actual signature from the employer, right, not just the preparer.

A. We never get an actual signature from the employer unless the case is audited. One of the requirements that we ask for with every audit, and it's actually in our regulation, is, we get a signed copy, has to be signed by all three parties, if there are three parties.

Q. That's postaudit.

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McGovern - cross

1 A. That's -- yes, the response to the audit must contain that  
2 signed application.

3 Q. But normally, for example, in --

4 MR. BRILL: If we could put Exhibit 101-2 up, please,  
5 Section N. Section N of the application.

6 N. There we go.

7 Q. So you have this section here, Employer Declaration. "By  
8 virtue of my signature below, I hereby certify the following  
9 conditions." There's obviously quite a few conditions. And  
10 then, "I declare under penalty of perjury" at the bottom.

11 MR. BRILL: If you can scroll down to the bottom of  
12 this section, please.

13 Q. You never actually expect to have a signature here on the  
14 signature line unless it's audited?

15 A. We don't get the signature, but the USCIS does. Our  
16 regulations require that the employer sign it and send that  
17 signed version to CIS.

18 Q. And that's when you get the special -- the special blue  
19 copy at the end.

20 A. The special blue copy, yes.

21 Q. Okay. But that's actually -- the alien has already been  
22 certified at that point; right?

23 A. No. The application has been certified.

24 Q. The application. So the application is certified, the  
25 employer then gets the special blue copy, and the blue copy is

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1 required to be sent back to not you guys but USCIS before what  
2 happens?

3 A. Well, it gets filed with the immigrant petition for a  
4 foreign worker.

5 Q. All right. So it's only after it's sent back signed that  
6 USCIS will then process the actual application -- well, pardon  
7 me -- will actually allow the worker to work in this country;  
8 correct? Does that make sense?

9 MS. ECHEBERG: Objection. I'm not sure she has  
10 personal knowledge of that part of the process.

11 MR. BRILL: She could say.

12 THE COURT: If you know.

13 A. It is only at the conclusion of the three steps -- first,  
14 the certification, second, the immigrant petition, and then  
15 finally, either obtaining an immigrant visa or obtaining  
16 adjustment of status from temporary to permanent immigrant --  
17 that the -- that the end of the permanent resident process --  
18 in other words, that's the admission of the foreign worker for  
19 that job on a permanent basis.

20 Q. Okay. And that last part is handled by USCIS, not by  
21 Department of Labor.

22 A. It is not handled by the Department of Labor. It's either  
23 handled by the USCIS or by the Department of State.

24 Q. So that depends on what type of application?

25 A. It depends on whether that individual is outside the

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McGovern - cross

1 country and seeking to enter from outside or is in the country  
2 seeking to adjust their status.

3 Q. Got you. Okay. So if we could go -- if we could use the  
4 same exhibit again. If we could go to the first page of the  
5 application.

6 You testified on direct that you received this  
7 information, I guess almost all of the applications, if not all  
8 the applications, that you have in front of you in those  
9 various folders online; correct?

10 A. Yes.

11 Q. And you testified that Department of Labor at this time and  
12 even up to the present does not have the capacity to do any  
13 sort of signature verification online, electronic signature;  
14 right?

15 A. That's correct.

16 Q. But there is some process, at least there's an attempt to  
17 verify the information that is provided; yes?

18 A. Yes.

19 Q. So the Department of Labor investigator or help center  
20 personnel, whoever's doing this, do they look up the name of  
21 the company somewhere?

22 A. They will look up the name of the company. We maintain a  
23 database, for example, of FEINs, federal employment  
24 identification numbers, where that would be looked up.

25 Q. So they type in a federal -- the FEIN that's here on the

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1 bottom?

2 A. To see if it matches against -- to see if it matches  
3 against the name as listed there.

4 Q. Okay. Now in a situation where there is no such company as  
5 CFI Framing & Developers that actually exists, you wouldn't  
6 look up the name, you'd actually be looking up the EIN;  
7 correct? Let me rephrase that. You don't look up the name,  
8 you look up the EIN.

9 A. We would look up the FEIN and look to see whether it in  
10 fact matches CFI Framing & Developers.

11 Q. Okay. And what happens if you figure out that this FEIN  
12 doesn't actually match up to any company that is called CFI  
13 Framing & Developers?

14 A. That's going to send off the bells and whistles and audit  
15 the case, most likely.

16 Q. Okay. Now since we were -- since we were talking about  
17 this specific case, that's 101-2, do you know if there was an  
18 audit associated with this?

19 A. I -- right now, just looking at this page, I can't tell.  
20 I'd have to look at the exhibit to see whether there was an  
21 audit. I don't think there was.

22 Q. Now to your knowledge -- and if this is outside of your,  
23 you know, frame of knowledge, just let me know -- do employer  
24 identification numbers get assigned to d/b/a's, that is,  
25 companies that are doing business under a separate name?

D1g1cib5

McGovern - cross

1 A. I have no idea. I'm sorry.

2 Q. No, that's fine. And do you know, is it a Department of  
3 Labor database, I assume, that you use to reference these  
4 employer identification numbers?

5 A. Actually, it's a commercial database.

6 Q. Oh. A private --

7 A. The IRS's own database is only available by statute. Yeah.

8 Q. So one part of the government can't use another part of the  
9 government's data; you have to go and pay somebody else for it.

10 A. You have to go and pay somebody else for it.

11 Q. That's the government.

12 A. That's right.

13 Q. So you go to a commercial provider.

14 A. Yes.

15 Q. Do you know the name of that commercial provider?

16 A. Right now --

17 Q. Back then, I guess we should talk about.

18 A. Unfortunately, I don't know the name back then. Right now  
19 we are purchasing it from a company called Experian.

20 Q. The credit report company.

21 A. Yes.

22 Q. Okay. And do you have any idea where they get their  
23 information from?

24 A. No, I do not.

25 Q. But since the information that comes from the IRS is only

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McGovern - cross

1 available by statute, can we assume that they're not getting it  
2 from the IRS either?

3 A. That I don't know.

4 Q. Other than the fact that the Department of Labor uses this  
5 database, is there any indication of reliability of the  
6 information in the database?

7 A. You mean in the Experian database.

8 Q. The Experian database, right. Does Experian guarantee the  
9 accuracy of its information to the Department of Labor?

10 MS. ECHENBERG: Objection.

11 THE COURT: Well, I'm not sure why it matters. If  
12 there's a disconnect between the employer identification number  
13 and the name of the employer, it simply triggers further  
14 investigation; right?

15 MR. BRILL: I don't necessarily want to mention it out  
16 here. If I could approach, just briefly.

17 THE COURT: Okay.

18 MR. BRILL: All right.

19 THE COURT: By the way, before we do this little talk,  
20 do you know the answer to his question?

21 THE WITNESS: No.

22 THE COURT: No.

23 MR. BRILL: Okay. Easy enough.

24 BY MR. BRILL:

25 Q. What type of records does the Department of Labor keep with

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McGovern - cross

1 regard to that database check that they do?

2 A. I don't know that I understand your question.

3 Q. All right. So on every file, on every application, it is  
4 the practice of the Department of Labor to check the EIN of the  
5 employer against this Experian database; right?

6 A. Yes.

7 Q. Is there any indication specifically on this one exhibit,  
8 101-2, that that in fact was done?

9 A. I don't know.

10 Q. Is there any record kept by the Department of Labor in a  
11 file, whether it's attached to this application or somewhere  
12 else, to show that that's done for each application. Well,  
13 let's say specifically for this application, just to make it  
14 simple.

15 A. I don't know.

16 Q. Based upon your experience, have you ever seen a record  
17 that the Experian database was checked?

18 A. No.

19 Q. And you said these are contract employees who are doing  
20 these initial screenings; correct?

21 A. That's correct, they're contractor. We have certain  
22 administrative staff that are contracted to the Department of  
23 Labor.

24 Q. So it's not -- they're hired by an outside vendor as  
25 opposed to hired directly by the government.

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McGovern - cross

1 A. The federal government, yes. They do the initial  
2 screening, the phone calls are made by contract staff but then  
3 are followed -- then are confirmed with federal staff.

4 Q. Confirmed only if there are issues, though.

5 A. Yes.

6 Q. So the initial screening is done by nongovernment  
7 employees, and that may be the only screening there is.

8 A. That's correct.

9 Q. Are you aware of or have you personally experienced the  
10 training that is given to these contract employees in dealing  
11 with these initial screening of the applications?

12 A. No.

13 Q. And is it the private contractor who maintains whatever  
14 records are created in that first instance --

15 A. No.

16 Q. -- or the federal government?

17 A. No, it's the federal government. Those were our case notes  
18 that we were looking at earlier.

19 Q. So the absence of a record of the database check would  
20 indicate that that was not in fact -- those records are not  
21 actually kept by the government; right? Do you follow me?

22 A. I think so. I --

23 Q. So if the government maintains the records of the  
24 application checks -- right?

25 A. Yes.

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McGovern - cross

1 Q. -- and there is no record of its database check in that  
2 record, that would indicate that the government doesn't keep  
3 those records; correct? That doesn't mean they don't check the  
4 database. We don't know if they checked the database in this  
5 case or not. But that's at least an indication they didn't  
6 keep a record of the check.

7 A. I don't know where the record is kept.

8 MS. ECHENBERG: Objection.

9 Q. You don't know where it's kept or whether it's kept?

10 A. I don't know where it is kept.

11 Q. Okay. Do you know if it is kept?

12 A. You're talking about the check against the Experian  
13 database.

14 Q. Right.

15 A. I believe that it's kept, but I couldn't point to you in a  
16 case and say, oh, that's the check.

17 Q. Okay. And again, I'm sorry to beat a dead horse here, but  
18 have you ever seen a note in any case note that says, "Checked  
19 with the Experian database"?

20 THE COURT: You want to know if there's a record of  
21 whether it was done?

22 MR. BRILL: Correct.

23 A. It may be simply called by a different name, but I'm not --  
24 I don't have knowledge whether that in fact --

25 Q. You know what I mean. I'm not saying do they have to say

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McGovern - cross

1 that they say specifically checked the Experian database. Have  
2 you seen a note that indicates that that database was checked?

3 THE COURT: Or that the employer identification number  
4 was checked.

5 MR. BRILL: Right. Thank you.

6 A. We do. It's called ICDAS. I have no idea what ICDAS  
7 stands for. But that's the initial check of the FEIN. So  
8 you'll -- you'll see it in the case events log, or if I would  
9 go into my account, I could see it in the case events log, over  
10 and over and over again, that this has been performed.

11 Q. Now as part of your preparation here before testifying,  
12 were you asked to review the case notes for each and every one  
13 of the applications that you have in front of you?

14 A. No.

15 Q. So when you were preparing, the government picked certain  
16 case notes to review with you.

17 A. Yes.

18 Q. Did you see -- if you didn't review them, did you see a  
19 collection of those case notes somewhere that you could have  
20 looked at while you were preparing?

21 A. No.

22 Q. Are those case notes kept in perpetuity by the Department  
23 of Labor?

24 A. I don't know.

25 THE COURT: Perpetuity is a long time.

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McGovern - cross

1 A. Yeah, perpetuity is an awfully long time.

2 Q. Let's say if this application was submitted in whatever  
3 date it was submitted, 2006, 2008, whatever it was, would they  
4 have been maintained up to the present day?

5 A. All of the records in the permanent employment program from  
6 March of 2005 are still preserved by the Department of Labor at  
7 this time.

8 Q. Okay. So after the EIN is checked and there doesn't appear  
9 to be a problem with that, the first contact with the employer  
10 is by e-mail; right?

11 A. That's correct.

12 MR. BRILL: And if we could put that back up on the  
13 screen, I'd appreciate it. 101-2, the first page of the  
14 application.

15 Q. You used the e-mail address that is --

16 MR. BRILL: At the bottom, please.

17 Q. You use the e-mail address here that's listed by the  
18 applicant; correct?

19 A. That's correct.

20 Q. And there's no way to know who is registered to that e-mail  
21 address other than, as you say, through a log of the IP?

22 A. The IP.

23 Q. You don't know who creates this e-mail address; right?

24 A. No.

25 Q. You don't know who has access to this e-mail address;

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McGovern - cross

1 right?

2 A. No.

3 Q. What you may be able to find out is who created -- what  
4 computer was used to fill out this application so that you  
5 could track it back using the IP address of that computer;  
6 right?

7 A. Correct.

8 Q. Is there a record -- I'm going around too many circles. Is  
9 there a record that is kept of the IP address for these  
10 applications?

11 A. I don't know.

12 Q. You haven't seen it in preparing for your testimony.

13 A. Correct.

14 THE COURT: Mr. Brill, it's 2:15.

15 MR. BRILL: I can stop here.

16 THE COURT: Okay. All right. I think we've had  
17 enough for one day.

18 Just remember the rules. Don't talk about the case,  
19 keep an open mind, and --

20 MS. ECHENBERG: May I just ask one thing, your Honor.  
21 Just because this witness has traveled from Washington, DC, I  
22 don't know how -- there may be a significant amount more of  
23 cross-examination. If that's the case, then probably makes  
24 sense --

25 MR. GREENFIELD: I'm sorry?

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1 MS. ECHENBERG: -- to break, but if there's not very  
2 much more --

3 MR. BRILL: I imagine that I am less than a quarter of  
4 the way through.

5 MS. ECHENBERG: Okay.

6 THE COURT: Okay. The witness can enjoy an evening in  
7 the Big Apple. Not too much enjoyment, though. You have to  
8 come back.

9 All right. So remember, tomorrow, try really hard to  
10 be here early so we can get started on time. Have a nice  
11 night.

12 THE JURORS: Thank you.

13 (Jury excused)

14 (Continued on next page)

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1 (In open court; jury not present)

2 MR. BRILL: Your Honor, I don't know what the court's  
3 position is on the prosecution speaking with the witness  
4 between today and tomorrow.

5 THE COURT: I just reminded the witness that she  
6 shouldn't do that.

7 MR. BRILL: Oh. Well, I'm way back here.

8 THE COURT: That's okay. I didn't say it that loud.

9 I know Brett mentioned to me some concern about Friday  
10 afternoon. I used some of my time on the bench to find out  
11 that travel time between here and Spring Valley and here and  
12 Monsey, according to Google Maps, is about an hour or under,  
13 and candle lighting, according to the Chabad website, is at  
14 4:36, so I don't think we have any problem getting our  
15 defendants back home.

16 Did the government give any more thought to the mail  
17 fraud issue?

18 MS. ECHENBERG: We have, your Honor. We would like to  
19 speak with our supervisors about that, and we have not had an  
20 opportunity to do that.

21 THE COURT: Okay. All right. Anything else?

22 MR. PASTORE: Your Honor, there is one issue with a  
23 witness that we anticipate for calling tomorrow.

24 THE COURT: Okay. Why don't we let this witness go on  
25 out and make sure she has a room, and have a nice night.

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1 THE WITNESS: Thank you.

2 (Witness excused)

3 THE COURT: Everybody can sit down. Unless you want  
4 to stand, if you've had enough sitting. I can understand that.

5 MR. PASTORE: Your Honor, the issue relates with  
6 respect to Mr. Altintas. He's been provided a nonprosecution  
7 agreement, and in the course of meeting with the government, he  
8 identified for us that in the early '90s, when he was first  
9 smuggled into the United States, he purchased a Social Security  
10 number, and he used that Social Security number in an attempt  
11 to get a driver's license. The Department of Motor Vehicles  
12 essentially caught that conduct and fined him \$50. We think  
13 it's essentially consistent with your Honor's prior ruling with  
14 respect to Mr. Grynsztajn. As you may remember, he had a  
15 similar issue. And so given the age of the behavior, given  
16 that there is no formal criminal conviction when we looked on  
17 his rap sheet, we would ask that cross-examination on this  
18 issue be precluded, essentially for the reasons that we set out  
19 when seeking to preclude cross-examination of a virtually  
20 identical issue for Mr. Grynsztajn. It was in the early '90s.  
21 He was smuggled into the United States 19 years ago by ship.

22 THE COURT: How old a fellow is he, or how old was he  
23 then? If you do the math. We need one piece of information.

24 MR. PASTORE: Right. I'm trying to do the math. He  
25 is I believe 49 years old now and he was smuggled 19 years ago

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1 so 20? 49 minus 19 is 20? This is why I'm an attorney.

2 THE COURT: That was the joke I was about to use.

3 MR. PASTORE: 30. 30.

4 MR. DONALDSON: Your Honor, Mr. Pastore brought that  
5 up to me last week, I believe. Am I right?

6 MR. PASTORE: Yeah.

7 MR. DONALDSON: Last week. I informed him that I  
8 would, of course, ask the court to allow me to get into that  
9 briefly. I believe it goes towards his credibility, his  
10 truthfulness. It's relates to some prior conduct.

11 THE COURT: He's going to admit to a lot of other  
12 conduct, I'm sure.

13 MR. DONALDSON: I'm hoping so. I don't know if he is,  
14 but I know the other witness is, but --

15 MR. PASTORE: Mr. Altintas is going to admit that he  
16 knew that the sponsor who was provided to him by Ms. Cibik was  
17 fraudulent, that she previously offered a fraudulent sponsor to  
18 his wife, and that he went forward with the application.

19 MR. BRILL: The fine of \$50 ultimately is irrelevant.  
20 The question is, the conduct could be felonious. I'm glad for  
21 him he only had to pay 50 bucks, but he could have been charged  
22 with a felony, and the conduct itself in New York State would  
23 have led to a felony conviction if they had chosen to prosecute  
24 him.

25 THE COURT: Well, in the other ruling I did consider

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1 what the criminal consequences were. Here, it's even less than  
2 the earlier criminal consequences, which I didn't permit cross  
3 on that. I'll be consistent. I don't know whether it's  
4 incorrectly consistent, but it's consistent.

5 MR. DONALDSON: Your consistency is that we're  
6 precluded from asking?

7 THE COURT: Yes.

8 MR. DONALDSON: Okay. Thank you.

9 THE COURT: I didn't answer in the morning, but I just  
10 want to make sure, I reread the transcript from yesterday, and  
11 I just want to be sure that I have the philandering information  
12 right. The original discussion was that there was an affair  
13 between Mr. Schwartz and Mr. Salamon's wife. That's what he  
14 said. This is an off-the-table topic. You're not interested  
15 in raising it.

16 MR. BRILL: It's off the table for me, Judge, but what  
17 other counsel want to do with it, I can't control, unless the  
18 court is making a ruling.

19 MR. GERZOG: I have no interest in that particular  
20 piece of information. I do want to speak to you about other  
21 things that Salamon may or may not have done.

22 THE COURT: Is anybody pressing that specific --

23 MR. GREENFIELD: I didn't know about that until  
24 Tuesday morning, so --

25 MR. DONALDSON: Neither did I.

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1                   THE COURT: Well, I think it was because you weren't  
2 at the conference where it was discussed. It was on the  
3 record. No one hid it.

4                   MR. BRILL: I believe it was when Mr. Schwartz was  
5 arraigned.

6                   THE COURT: First, let's just clarify. Is anybody  
7 seeking for any reason to get into those allegations of the  
8 affair? In which case, you would need some basis for it other  
9 than, you know, the conversation on the record.

10                  MR. BRILL: It's kind of against the grain, but it  
11 would be our position that there is no good faith basis to ask  
12 about it. Mr. Schwartz denies it ever happened.

13                  THE COURT: So I think that for anybody else as to  
14 that, there has to be some basis, and I don't think I've heard  
15 a basis.

16                  MS. ECHENBERG: Well, the government may want to get  
17 into it to the extent that Mr. Greenfield is going to argue  
18 that Mr. Salomon was a philanderer because Mr. Salomon will say  
19 that at a certain point, after his wife had cheated on him,  
20 he -- the marriage was over and the marriage ultimately ended  
21 in divorce, and I think once we go down that road, we're  
22 getting into all sorts of things that are completely unrelated  
23 to this trial and there's just going to be a complete  
24 distraction to the jury.

25                  MR. GREENFIELD: What I had in mind, Judge, was a

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posting on sugardaddyforme.com, where Mr. Salomon is trolling for young women looking for sugar daddies, and he alleged -- he claimed in that posting that he's a successful attorney making a half million dollars a year. So I mean, I didn't -- if he put it on Facebook, I would use Facebook. He put it on sugardaddyforme.com. I don't think I ought to be prevented from pointing out to him or asking him where did he put it and what did he say in there.

MS. ECHENBERG: And your Honor, the government intends to ask Mr. Salomon if he's ever posed as an attorney, and I expect his answer will be yes, to meet women, he pretended he was an attorney to impress them, so we would certainly get into that, but to the extent that we need to get into this sexual activity that he's engaging in or put any of these postings in or get into the fact that he's a liar because he's a philanderer, I think that goes off in a --

THE COURT: Isn't the defense theory relatively simple: If you're prepared to break one of the Ten Commandments, you have willingness to break one of the others?

MR. GERZOG: That's reasonable.

MR. GREENFIELD: That's reasonable.

MR. GERZOG: But if you're a Hasidic Jew and you don't follow the laws of the state or of god, you're really not a reliable person.

MS. ECHENBERG: And your Honor, if that's the argument

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1 that's going to be made, then I think Mr. Salamon will be  
2 forced to explain why he lost touch with Mr. Schwartz, as was  
3 discussed in the opening. He lost touch with him because  
4 Mr. Schwartz had an affair with his wife, and that was part of  
5 the unraveling of his marriage. And so --

6 THE COURT: It's getting better by the minute.

7 MS. ECHENBERG: So we can certainly get into all that,  
8 but I think that is a tremendous distraction, and there is a  
9 large volume of material to cross-examine Mr. Salamon about,  
10 the fact that he's been untruthful in many ways, and I don't  
11 think we need to get -- Mr. Greenfield said yesterday he wants  
12 to talk about the piousness of Orthodox Jews and --

13 MR. GREENFIELD: I never said that.

14 MS. ECHENBERG: -- and if we're going to get into  
15 that, I think it's important that the jury know that there's an  
16 allegation that Mr. Schwartz has broken his vows as well and is  
17 a liar in that sense as well.

18 So I think it cuts both ways. Either we're going to  
19 get into the sexual life of all of the defendants and the  
20 cooperators or we're not. And our preference would be that we  
21 not because we think that's a tremendous distraction and it's  
22 not probative of anything, and there is plenty to cover here  
23 with these witnesses about their truthfulness.

24 MR. GERZOG: Let me mention this, your Honor.  
25 Mr. Grynsztajn, who I expect will testify tomorrow, in his 3500

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1 material he definitively says that Mr. Salomon brought  
2 prostitutes and controlled substances to the office and used  
3 them both there. Mr. Salomon, on the other hand, completely  
4 denies that. The fact that the government's two main witnesses  
5 are in total conflict as to an important issue surrounding  
6 credibility is I think invaluable to me as far as telling the  
7 jury, how can you believe, you know -- the government is  
8 putting these people on the stand who are saying different  
9 things about, you know -- one of them is lying. I don't know  
10 which one is. I wasn't there. But one of them is lying. And  
11 I think I need -- I have an absolute right to be able to tell  
12 the jury that the government's own witnesses -- *ipso facto*, one  
13 of them is lying about that.

14 MS. ECHENBERG: Your Honor, Mr. Salomon does not deny  
15 that in its entirety, and that was briefed in our papers, and  
16 as is reflected in the 3500 materials --

17 MR. GERZOG: It's reflected in the 3500 materials that  
18 he got massages with some sexual aspect to it, and believe me,  
19 I don't want to get into, "I did this action with this woman."  
20 I mean, I have no interest in that, but --

21 MS. ECHENBERG: I think we would have to get into that  
22 if you want them tarred -- what Mr. Grynsztajn says and what  
23 Mr. Salomon says, because if you break it down, they're not  
24 really in conflict. Mr. Salomon admits to certain  
25 inappropriate activity in the office. He does.

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1                   MR. BRILL: As I raised, Judge, then I would have to  
2 subpoena Mr. Salamon's ex-wife to refute these allegations.

3                   THE COURT: Mr. Donaldson?

4                   MS. ECHENBERG: Yeah. I mean, my colleague just  
5 reminded me, Mr. Gerzog joined this case late, after we  
6 submitted our motions and we briefed them. All of the conduct  
7 that Mr. -- that Witness 2, as he was referred to in the  
8 briefing, admitted to is in the brief. It was disclosed to  
9 counsel in that way as well as in the 3500, but in much more  
10 detail in that briefing, which was I think a month ago. So  
11 there's no question that this has been disclosed and that  
12 Mr. Salamon has admitted to certain of his conduct, and that's  
13 why we made this motion to exclude it.

14                  MR. GERZOG: The fact of the matter is, Judge, that  
15 Grynsztajn and Salamon hate each other, and I intend to exploit  
16 that to the maximum possible degree, and this is one of those  
17 areas where they -- where Grynsztajn insists that Salamon is a  
18 horrible, despicable, disgusting person who did this stuff, and  
19 I think Salamon is going to say, "I'm not nearly so horrible as  
20 that." He may say, "I've done some wrong things," but I don't  
21 think he has -- I don't think he's going to admit to anything  
22 nearly as bad as Mr. Grynsztajn says, and I'm going to -- I  
23 intend to exploit everything I can find, every point of  
24 disagreement. Grynsztajn and Salamon are constantly on each  
25 other's back. "You cheated me." "No, you cheated me." "No,

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1 you're a liar." "No, you're a thief." You know, and I'm  
2 entitled to show the jury that the government's two main  
3 witnesses, really the only evidence they have against my  
4 client, are in conflict on very many issues.

5 THE COURT: Mr. Donaldson?

6 MR. DONALDSON: Thank you. Otherwise we would really  
7 enjoy hearing all of that stuff, but just for my client's  
8 position, I think in my papers I spoke about the prostitution  
9 issues, and I maintain that position. With regard to my  
10 colleague's position regarding the -- what's it called?

11 MR. GREENFIELD: Sugardaddyforme.com.

12 MR. DONALDSON: Sugardaddyforme.com. Our position is,  
13 if Mr. Salamon is not an attorney, and he's not, and he placed  
14 out in the public eye that he is an attorney, then that should  
15 be brought out. Now what the government wants to do, I guess,  
16 is to allow that part out because they're going to say it but  
17 then separate where it comes from, or the actual place where it  
18 comes from, so I would make a suggestion that I don't see  
19 why -- if that's where it comes from, that's where it comes  
20 from. I don't know if we have to get into the details about it  
21 or what sugar daddy is, about where it is located, where that  
22 inconsistency is located, from the government.

23 (Continued on next page)

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1 MR. GREENFIELD: Not only is that where it comes from.  
2 That's where it is as of two days ago.

3 MR. DONALDSON: That's where it is as of two days ago.

4 MR. GREENFIELD: He's still got it up on the internet.

5 MR. DONALDSON: Then it really clearly still is that's  
6 just relevant.

7 Now, the part about the inconsistency between  
8 Mr. Grynsztajn says Mr. Salamon did one thing -- I read the  
9 3500 material four times, unfortunately for me.

10 THE COURT: Probably going to be blocked. No, it's  
11 not blocked.

12 MR. DONALDSON: Can I see it too?

13 THE COURT: Yeah, sure.

14 MR. DONALDSON: Are you looking at it?

15 THE COURT: So we have I am a sugar daddy or I'm  
16 seeking a sugar daddy.

17 MR. DONALDSON: This is great.

18 MR. GERZOG: Your Honor, Page 6's ears are burning.

19 THE COURT: So you --

20 MR. DONALDSON: If it's still up there now, Judge, I  
21 thought I read someplace in the 3500 material where, well, one  
22 of the government witnesses, Earl David, and not the witness  
23 but Earl David and someone else got mad at Mr. Salamon because  
24 he put up that he was a lawyer on the website and they said to  
25 take it down right away, etc. He said he did. Well, if it's

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1 still up there, then it means that's a lie on top of a lie. He  
2 told them he took it down. It's still up there, I think that  
3 makes it even more relevant. That means he's still holding  
4 himself out as an attorney or at least that maybe he forgot to  
5 take it down. I don't know. But that, in my opinion,  
6 shouldn't be allowed, maybe in a very limited way, but that  
7 should come out.

8 I would stand by my position in my briefing about the  
9 prostitution issue. I think it should come in as a crime. He  
10 did it several times obviously.

11 THE COURT: I'm not sure how you search it.

12 MS. ECHEBERG: And, your Honor, I'm not sure, if it  
13 even exists, when it was last accessed.

14 MR. GREENFIELD: My client printed it out for me two  
15 days ago.

16 MS. ECHEBERG: I'm saying if it was up there at some  
17 point, things can remain up and people don't know they're up.

18 THE COURT: I don't know that matters. I don't think  
19 that's the issue.

20 MS. ECHEBERG: And like I said, Mr. Salomon will  
21 admit that he has posed as a lawyer to meet women.

22 MR. PASTORE: Judge, there's just one factual  
23 inconsistency in the record as it relates to Mr. Grynsztajn. I  
24 apologize for jumping in.

25 Mr. Grynsztajn did not say it was on sugardaddy.com.

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1 He was on the Earl David law firm website. So it didn't have  
2 to do with sugardaddy.com.

3 And so the point that I think is significant is really  
4 a salacious detail that's unnecessary to the fundamental point.  
5 And what Mr. Gerzog says he's hoping to exploit, sort of the  
6 hatred or dislike between these two defendants, that has  
7 nothing to do with their credibility.

8 THE COURT: If someone hates somebody else, isn't that  
9 a motive to lie about them?

10 MR. PASTORE: With respect to Mr. Salamon and  
11 Mr. Grynsztajn, I don't see how that would be relevant. In  
12 other words, it doesn't go to the credibility of what they're  
13 saying about these defendants.

14 MR. GERZOG: I expect Salamon will say you can't  
15 believe a word Grynsztajn says. I believe Grynsztajn will say  
16 you can't believe a word Salamon says. And if they don't say  
17 that, I have the 3500 material to suggest that it's a very  
18 recent change of heart on their part, which is also would be  
19 quite interesting.

20 So I am entitled to show the jury that Grynsztajn, who  
21 has been sponsored by the government as a truth teller, says  
22 that Salamon is a total liar. And Salamon, who is being  
23 sponsored by the government as a truth teller, says Grynsztajn  
24 is a total liar.

25 MS. ECHENBERG: I would love to see this 3500 because

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1 I'm not familiar with either of them --

2 MR. GERZOG: Quote/unquote total liar, no. But in  
3 substance, yes.

4 MS. ECHENBERG: They certainly had disputes over money  
5 and the jury will learn that everyone at this law firm was  
6 cheating everybody out of everything. So, yes, they certainly  
7 will say that they cheated each other, they cheated other  
8 people. That will all be out in the open and there will be I'm  
9 sure substantial cross about that.

10 THE COURT: So the one thing you want to protect him  
11 from is that he posted himself on the sugar daddy website.

12 MR. BRILL: Judge, one thing I want to protect  
13 Mr. Schwartz from is the public embarrassment, which we did it  
14 once in court privately with a few people. Now we're doing it  
15 in court with a bunch more people. Now, he's -- you can't  
16 tell.

17 THE COURT: Let me ask you this. Even why is it  
18 necessary to deal with allegations of a specific affair when  
19 the point could be made from the sugar daddy website alone?

20 MR. GREENFIELD: That was my point. I didn't even  
21 have the affair in mind. I didn't know about it when I said --  
22 it just seems so basic to me. The guy's got an ad out on sugar  
23 daddy, whatever it is, and where he says he's a lawyer and it's  
24 still running now and it was running three years ago.

25 And I mean I appreciate the government saying we're

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1 going to ask him did you ever say you were a lawyer. He said  
2 he was a lawyer a million times for a million people. He held  
3 himself out as a lawyer to the world and a successful lawyer.  
4 I shouldn't be precluded from that. I can't imagine the  
5 connection. I say didn't you run an ad an sugardaddy.com and  
6 it's still running? And he'll say I only did that because  
7 Mr. Schwartz had an affair with my wife. I don't see that.

8 THE COURT: I don't see why that gives you like some  
9 moral excuse anyway. In other words, the behavior is the  
10 behavior but, you know.

11 MR. GERZOG: The fact he was cuckolded doesn't mean he  
12 has an excuse to run rampant, roughshod, and call himself a  
13 lawyer and philander around. He either did or didn't have the  
14 affair, but that doesn't excuse the rest of his behavior.

15 THE COURT: So are you on the same page that I was  
16 suggesting that you can bring out his posting without getting  
17 into the specific affair because --

18 MR. GERZOG: The government just has to instruct him  
19 not to say, yes, I did post on sugardaddy.com, but the reason I  
20 did it was because I was cuckolded by Mr. Schwartz.

21 MS. ECHEMBERG: Your Honor, we've gone on sort of  
22 three different tracks here so let's just focus on what people  
23 are asking to come in and not come in.

24 Yesterday Mr. Tischler, excuse me, Mr. Greenfield was  
25 marking the argument that he wanted to argue that Mr. Salomon

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1 was a liar because he had had affairs, he had cheated on his  
2 wife. That's what he argued yesterday.

3 Now the argument is a little bit different. The  
4 argument is about whether he's ever posed as an attorney, and  
5 we have no problem with that coming in. That should absolutely  
6 come in and absolutely goes to his credibility. But if he's  
7 going to be questioned --

8 THE COURT: I think he just called him a philanderer.

9 MS. ECHENBERG: And if he's going to be accused of  
10 being a philanderer, I think his response and his appropriate  
11 response is going to be --

12 THE COURT: Someone else did it first.

13 MS. ECHENBERG: That his marriage had ended for all  
14 intents and purposes.

15 THE COURT: Not --

16 MR. BRILL: He didn't get divorced for another ten  
17 years after this alleged affair.

18 MS. ECHENBERG: Right. But the conduct that  
19 Mr. Greenfield was talking about was post in the mid-2000s,  
20 which is around when he got divorced, when he was in the  
21 process of getting divorced.

22 THE COURT: As a Jewish male in a religious community,  
23 he has a remedy. He can get a Jewish divorce even if it's a  
24 legal -- the civil stuff takes longer. I guess maybe that's  
25 just my own sense of morality, but I don't see why.

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1 MS. ECHENBERG: Your Honor, can I say one thing. I  
2 think the fact we're talking about morality, if we're going to  
3 get into the jury about faithfulness to spouses, I just don't  
4 think that's an area that's appropriate to be getting into.

5 THE COURT: Is it true or not -- wait a second. When  
6 he posted on the sugar daddy website, was he married or was he  
7 divorced?

8 MS. ECHENBERG: I don't think that's right, but I  
9 haven't seen the particular post they're talking about.

10 I think this has a tendency to inflame the jury in a  
11 way that is extremely prejudicial and not as probative as  
12 counsel are arguing it is, especially since there is tremendous  
13 grounds for cross-examination here.

14 MR. GERZOG: Judge, this is 2013. No one wants to get  
15 into the salacious specific details of what they did. No one  
16 is 2013 is shocked that people have adulterous affairs. It's  
17 just not that salacious these days. It goes to your  
18 credibility. It goes to whether you're an honorable person,  
19 but it's not all that salacious. It's not like you're having  
20 some wild and kinky thing that nobody else does or that  
21 everyone thinks is bizarre. People have affairs all the time.

22 THE COURT: But doesn't it matter whether he's married  
23 at the time? If he's not married, there's a whole host of  
24 activity that is, you know, more acceptable than if you are  
25 married.

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1 MR. GERZOG: Certainly when he was bringing the  
2 prostitutes and the cocaine to the office he was married.

3 MS. ECHENBERG: First of all, there was never any  
4 cocaine in the office. Second of all, there weren't  
5 prostitutes.

6 MR. GERZOG: That's not what Mr. Grynsztajn says.

7 MS. ECHENBERG: That's not what Mr. Grynsztajn says.

8 MR. GERZOG: If I ask Mr. Grynsztajn and I have it  
9 stuck up my nose and he says I never said that, then I look  
10 like a fool.

11 MS. ECHENBERG: I think putting that out in front of  
12 the jury is inflammatory when there's no basis to ask that  
13 question.

14 MR. GREENFIELD: What are we talking about? It's a  
15 fact that he went on a website, public website called  
16 sugardaddyforme.com, and alleged that he was a lawyer.

17 MS. ECHENBERG: Right, and I have no problem with the  
18 fact that he went on a website to meet women and claimed to be  
19 a lawyer. That should absolutely be asked about. We are not  
20 arguing about that.

21 To get into the fact of it sugardaddy.com and to delve  
22 whether there was massages and this is the stuff we're talking  
23 about and this is where we're going to go if we go down this  
24 road.

25 THE COURT: I guess we have three topics. Just I know

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1 so I can give you rulings.

2 We have can there be a reference at all to the sugar  
3 daddy website or does that have to be sanitized. Then there's  
4 the issue of whether Mr. Salamon will be gagged about his  
5 excuse for his activity.

6 MR. BRILL: Judge, if I could put one minor point. In  
7 all of the 3500 material, he never says, at least it's Janis's  
8 lovely handwriting, there's never an affair. It just says  
9 kissing, kissing, kissing all over the place. So I don't know  
10 if there is a separate conversation the government has had with  
11 him about an affair, but I just needed to make that clear.

12 MS. ECHENBERG: Your Honor, there's references in the  
13 notes to his wife and Mr. Schwartz going to hotels and  
14 traveling together. And then there's another reference to  
15 Mr. Schwartz coming to his wife with a knife to his throat and  
16 saying I'm going to commit suicide if you don't marry me in the  
17 3500.

18 THE COURT: Mr. Schwartz? It says in the 3500  
19 material that Mr. Schwartz approached Mr. Salamon's wife and  
20 said if you don't marry me, I'm going to kill myself?

21 MS. ECHENBERG: Yes.

22 MR. BRILL: Mr. Salamon says.

23 MR. GERZOG: And Mr. Salamon apparently says,  
24 according to the 3500 material you gave today, that Mr. Cohen's  
25 wife propositioned him.

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1 THE COURT: Whose wife?

2 MR. GERZOG: Mr. Cohen. Isn't there in the 3500?

3 MS. ECHENBERG: Several days ago there was a reference  
4 to Schwartz's wife propositioning Mr. Salamon.

5 MR. GERZOG: That's what I mean.

6 MS. ECHENBERG: I'm telling you this is quite a mess.

7 And so what concerned me yesterday was this idea that there's  
8 going to be arguments about morality and piousness. And  
9 Mr. Brill himself told me when we were talking, he referred to  
10 his client and Mr. Salamon as hippie Hasids. This is not --  
11 we're going to get into morality, we can go there, but I think  
12 it's going to be ugly and distracting and it's not what this  
13 case is about.

14 MR. DONALDSON: Not for my client. Won't be ugly at  
15 all for us.

16 MR. BRILL: I'm copywriting that term.

17 MR. GERZOG: And for my client, it goes directly. The  
18 only evidence they have essentially against my client is the  
19 testimony of these two guys. And the testimony of these two  
20 guys is going to be that each of the other is a liar and a  
21 cheat and can't be trusted. And I believe I'm completely  
22 entitled to get that out, that their own two witnesses don't  
23 trust, will tell the jury that you can't rely on a word of the  
24 other.

25 MR. PASTORE: Your Honor, just for the record, in

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1 terms of the evidence against Mr. Brodjik, and I only state  
2 this very briefly, the two witnesses are not going to be the  
3 only evidence. Some of the most devastating evidence is  
4 Mr. Brodjik's own emails to Earl David describing in detail his  
5 role in the fraud as well as emails between him and other  
6 coconspirators in which he's complaining they were cutting him  
7 out and not paying.

8 MR. GERZOG: Your Honor --

9 THE COURT: As I recall.

10 MR. GERZOG: I had mentioned earlier that we have to  
11 discuss that. We don't believe any of that comes in. We  
12 believe none of that is admissible evidence.

13 THE COURT: Why not?

14 MR. GERZOG: Because no way to authenticate it.

15 THE COURT: I sort of do recall other cases that it's  
16 not really a proper question to ask a witness do you think this  
17 other witness is a liar, that that is ultimately the role of  
18 the jury to decide who's telling the truth and not to have  
19 witnesses opining on the credibility of other witnesses. So  
20 I'm not sure, Mr. Gerzog.

21 MR. GUTMAN: Your Honor, actually Rule 608 of the  
22 Federal Rules of Evidence specifically says the credibility of  
23 a witness may be attacked or supported by evidence in the form  
24 of opinion or reputation relating to character for  
25 truthfulness.

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1                   THE COURT: But doesn't that involve character  
2 witnesses?

3                   MR. GERZOG: Normally think of that as people coming  
4 in to say he's a good guy, but the rule also says you can say  
5 he's a bad guy.

6                   MR. GUTMAN: It's character of a witness, Rule 608.

7                   THE COURT: All right. I'm not sure that's responsive  
8 to what I said, but I'll look that up too.

9                   MR. DONALDSON: I don't want to steal Mr. Gerzog's  
10 thunder here, but I agree from reading both persons' 3500  
11 material that there clearly was some history between the two  
12 that would call into question the other person's credibility.  
13 So I think not to tell him what I was going to do, but the way  
14 I thought the proper way to do that, I think you can do it  
15 through argument. I've never seen one witness opining about  
16 the other, but I have seen and have done a development of one  
17 witness saying what happened between him and the other witness  
18 and the other witness saying what happened between him and the  
19 other witness and then arguing that they both have X, Y Z.

20                  MR. GERZOG: I wasn't suggesting to have the witness  
21 say what is your opinion of Mr. Salamon's credibility. I was  
22 going to do it by saying when you were dealing with  
23 Mr. Salamon, was he honest with you, did he lie to you, did he  
24 steal from you. And I expect Mr. Grynsztajn to say he was  
25 dishonest to me, he lied to me, he stole from me. But

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1 Mr. Gutman's point is a good one that apparently I have more  
2 leeway than I thought I did.

3 THE COURT: We'll find out.

4 MS. ECHENBERG: The government has no issue and could  
5 have no issue with that line of questioning. It's when he  
6 crosses into allegations of prostitutes and cocaine, which  
7 first of all the cocaine is unsubstantiated. I don't think  
8 there's any basis for that.

9 THE COURT: Wasn't the reason that someone wanted to  
10 get into the activity at the law firm not just for the  
11 salacious interest in it, but wasn't that supposed to be an  
12 explanation for why they had to leave one office space and go  
13 to another and one defendant was going to claim that that's why  
14 he was the person that had to sign a new lease? It wasn't in  
15 the abstract. In the abstract, I really don't care.

16 MR. GREENFIELD: That was me, Judge. At the time I  
17 was under the impression that it was that it was Maiden Lane,  
18 which my client I think the government concedes had nothing to  
19 do with. That's the third office.

20 THE COURT: Okay.

21 MR. GREENFIELD: So if that's accurate, then I thought  
22 that was what -- I thought I was confused when I raised it. It  
23 was brought out that I was thinking of something else and if  
24 that's the case --

25 THE COURT: That activity has no substantive.

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1                   MR. GERZOG: No, Judge, may I? In fact, after  
2 Mr. David goes to Canada, what you're left with is Mr. Salomon  
3 and Mr. Grynsztajn in I don't remember which office and they  
4 can't -- and they split up. They can't work together. I don't  
5 remember if it's Salomon quote/unquote fires Grynsztajn or  
6 exactly how. Refresh my recollection tonight as I go over the  
7 3500 material, but it was the cause of a blowup. The blowup  
8 was coming and coming and coming it was coming to a boil. You  
9 can see it all through the 3500 and then it blows up entirely.

10                  MS. ECHENBERG: Your Honor, I can clarify this.

11                  THE COURT: Sure.

12                  MS. ECHENBERG: Earl David leaves in 2004, 2005. The  
13 firm remains at 110 Wall Street until about 2006 when their  
14 lease is up. The lease is in the name of Michael David, Earl  
15 David's brother. So they need to find a new space. At around  
16 that time in 2006, David Grynsztajn is approached by the United  
17 States government in connection with this investigation. So in  
18 part he wants nothing to do with this because he's now been  
19 approached by the government. There is a dispute between  
20 Salomon and Grynsztajn at that time, and that will certainly  
21 come out and there can be tremendous questioning about that.

22                  But I don't think there's any basis to believe that  
23 they split up at that time because they cannot stand each  
24 other, they cannot work together anymore. They certainly have  
25 had disputes, but it is in large part because Mr. Grynsztajn is

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1 now being investigated.

2 MR. GERZOG: In fact, your Honor, we just got again  
3 3500 material a day or two ago that shows Mr. Grynsztajn went  
4 right back into business even after he had taken a guilty plea  
5 and signed cooperation agreement and that on Monday, the day  
6 before trial, the government had him plead guilty to another  
7 count to punish him for the fact that he broke the first  
8 cooperation agreement and didn't just rip up the agreement but  
9 said, you know, come ahead, it's okay.

10 THE COURT: But that doesn't, none of that really goes  
11 to whether they were prostitutes or just getting massages or  
12 something else and that doesn't seem to have any real substance  
13 in the case.

14 So we're down to, if I'm right, the sugar daddy, the  
15 alleged affair, and this office activities. I'll give you  
16 either rulings this afternoon by letter or first thing in the  
17 morning.

18 MR. BRILL: I think as to the sugar daddy, it's  
19 whether they can mention the name of the website or whether  
20 they we can ask at all about it.

21 THE COURT: Well.

22 MR. DONALDSON: I thought the government conceded we  
23 could ask, I think they tried to sanitize and say they didn't  
24 mind if we asked about him putting up as a lawyer on a website  
25 related to -- I think her words were related to meeting women.

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1 So they said they don't mind.

2 THE COURT: Does the name bother you?

3 MS. ECHENBERG: Look.

4 THE COURT: Particularly?

5 MR. GREENFIELD: It could be online candy store.

6 MS. ECHENBERG: It's salacious. It's a distraction.

7 They're going to wonder what sugar daddy is.

8 THE COURT: I think they know.

9 MR. DONALDSON: Just so I can finish my record.

10 MS. ECHENBERG: I don't think it's necessary is what  
11 I'm saying.

12 MR. GREENFIELD: They certainly.

13 THE COURT: Remember, folks. It really is 2013.

14 MR. DONALDSON: Does that mean I can do what I want?

15 THE COURT: It's between you and your spouse.

16 MR. DONALDSON: Talk to her about that tonight.

17 THE COURT: And whatever she says goes.

18 MR. DONALDSON: Absolutely.

19 MS. ECHENBERG: I think, your Honor, also, if they're  
20 going to ask if he was married at the time when he made those  
21 postings, then that bears on what we can get into with respect  
22 to the affair.

23 THE COURT: That may be really part of the problem,  
24 that it's hard to stop it once you start it.

25 MS. ECHENBERG: Right.

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1                   THE COURT: And make it beyond anything that makes  
2 sense.

3                   MS. ECHENBERG: And I assure you, it can get quite  
4 ugly.

5                   THE COURT: Okay, guys. See you promptly in the  
6 morning.

7                   (Pause)

8                   THE COURT: Wind back. Who is Mr. Mirandona?

9                   MR. BRILL: I don't know if this affects Mr. Tischler  
10 and Mr. Schwartz.

11                  THE COURT: I have no idea.

12                  MS. ECHENBERG: There are emails that came from the  
13 same set.

14                  MR. PASTORE: So I can very briefly describe the  
15 issue.

16                  There was a search conducted at 125 Maiden Lane on  
17 January 15, 2009. Pursuant to that search, several computers  
18 were imaged on-site. They were imaged by John Mirandona.  
19 That's where the name comes from. He then extracted certain  
20 emails that we looked through from those computers.

21                  And in preparation for this trial, he's reduced that  
22 to I think less than 15 emails that have been provided  
23 separately, and we intend to call him to testify about how  
24 those emails were recovered. And then we would move them into  
25 evidence as being seized pursuant to the search and the email

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1 addresses that are associated or in those emails can be  
2 identified by various witnesses as well as various documents.

3 For instance, Mr. Brodjik's email address is going to  
4 be confirmed by a public storage unit that he rented as well as  
5 witness testimony. And I believe Mr. Schwartz's email address  
6 is going to be confirmed by witness testimony.

7 MS. ECHENBERG: There's an email that Mr. Tischler  
8 forwarded to Mr. Salomon, and I think Mr. Tischler has  
9 stipulated to the email address for that email.

10 MR. PASTORE: And then there's also email references  
11 to from a G Cibik.

12 THE COURT: The bottom line is this guy downloaded  
13 these emails from computers that were the subject of a search  
14 and there has never been a motion to suppress.

15 MR. PASTORE: Correct, your Honor.

16 MR. GERZOG: It's not about suppressing, your Honor.  
17 They didn't seize them illegally. The problem is they're not  
18 authentic. Mr. David is not here to say I got this from Mr. --  
19 then the fact it simply says an email address, I use my wife's  
20 email. I correspond on my wife's email and she corresponds on  
21 my email and it doesn't mean that it came from me. An email  
22 address is simply someone who has access to your password. It  
23 is not like a letter which you can say this is in the  
24 handwriting of the person who purports to be from. It's just  
25 typed words coming from an email address. That's all it is and

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1 it's not authentic. There's no way the government can show  
2 that Mr. Brodjik sent those emails or that Mr. David sent those  
3 emails.

4 MR. BRILL: As to Mr. Schwartz, the two emails we've  
5 been provided -- there's only two -- are both in the sent  
6 folder of that computer. Mr. Schwartz has no memory or  
7 knowledge of having received those. There's a different issue  
8 for that.

9 THE COURT: I think you're welcome to cross on that.

10 MR. GERZOG: How can you cross the man who just merely  
11 discovered them on the computer?

12 THE COURT: Same way you do when you have phone  
13 records. You don't know if -- you can say this is a phone  
14 registered in somebody's name. Doesn't mean that someone else  
15 couldn't have borrowed the phone and placed the call. Same  
16 principle.

17 MR. GERZOG: Your Honor, it isn't because it's an  
18 explicit statement, essentially, indirectly anyway, of guilt  
19 that Mr. Brodjik says, you know, I did all this stuff for you  
20 and now you're cheating me out of the money I earned. And  
21 there's no way for you or me or anyone else to know whether  
22 Mr. Brodjik actually sent that or not.

23 If they wanted to seize Mr. Brodjik's computer and  
24 check the IPO addresses and go into it, there is a way to make  
25 more of a link. But they didn't do that. They just assumed

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1 because it says it comes from his email address, it comes from  
2 him and that's improper.

3 MR. GUTMAN: Your Honor, just to complete the thought,  
4 it's something as to which we're entitled in the first instance  
5 to a ruling by the Court on whether there's sufficient support  
6 for the government's position that this is what they say it is,  
7 which is a writing by the defendant. It's not defendant's own  
8 writing. It's not admissible as anything. It's not relevant.

9 It's only admissible if they can get passed the hurdle  
10 of saying this is authentically or there's at least enough to  
11 go to the jury and it's a question first for the Court whether  
12 it is they have shown -- if this were a voice recording, for  
13 example, we could ask the Court to rule on is there a  
14 sufficient basis for saying that's the voice of the defendant  
15 on the recording and it's basically the same thing.

16 Under the rules of evidence, it is initially a  
17 determination to be made by the Court. If it comes in, we can  
18 still make arguments to the jury, but first we're entitled to  
19 the Court's ruling on whether they have and especially because  
20 as Mr. Pastore makes clear this is central part of their case.

21 THE COURT: That Mr. Brodjik worked there. He was  
22 there, right? That's going to come in. That's going to be  
23 established.

24 MR. GERZOG: We don't deny he worked there.

25 MR. GUTMAN: They're relying on his emails on the

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1 theory that they are his words, that he typed them. And if  
2 they can't authenticate that, they shouldn't be permitted to --

3 THE COURT: Under your theory that would be  
4 impossible.

5 MR. GERZOG: No.

6 MR. GUTMAN: They have an opportunity to show the  
7 Court how they're going to do it.

8 THE COURT: What exactly, since you could come up and  
9 take my computer if it was open and type an email on it.

10 MR. GERZOG: If we knew your password.

11 THE COURT: It's open right now. Assume it was open.  
12 Then your theory it's impossible to ever know whether the  
13 person who apparently, because it's their email address is  
14 used, actually sent the email. How would you prove?

15 MR. GUTMAN: We're not saying it's impossible.

16 MR. GERZOG: Not only sent but wrote, and your Honor  
17 just put your finger on it. If I wrote the email, could it  
18 come into evidence against Judge Buchwald if she was on trial?  
19 How could it?

20 THE COURT: The whole point.

21 MR. GERZOG: Judge Buchwald didn't write it.

22 THE COURT: But you still work off of the basic  
23 presumptions that the person listed as the author is the author  
24 because if you don't, my point is that if you don't work from  
25 that presumption, how would you ever establish?

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1                   MR. GERZOG: You could establish it by showing there  
2 was something in the email that only Mr. Brodjik knew about,  
3 that Mr. Brodjik or that Mr. Brodjik referenced my daughter and  
4 then gave his daughter's name is sick and such and such and  
5 such happened. There's no way unless there's something else,  
6 and there are lots of other things that can be used to  
7 authenticate it, but they have nothing. And if they are  
8 allowed to put in front of the jury these emails, which in fact  
9 I will tell you it is our understanding that at least some of  
10 them Mr. Brodjik did not in fact write.

11                  THE COURT: And you have some theory by what, someone  
12 else did?

13                  MR. GERZOG: Yes.

14                  THE COURT: I know you don't have a burden, but still.

15                  MR. PASTORE: Judge, if I may, this is sort of  
16 academic because one of the emails that's contained in the  
17 electronic files, Mr. Brodjik himself provided a printed copy  
18 to an agent when they searched his house, the same email, and  
19 it's an email chain. So the same email that Mr. Brodjik  
20 personally provided to agents appears in the electronic  
21 records. That's No. 1.

22                  No. 2, the email account from which the emails were  
23 sent, to which they were received, is the same email account  
24 that Mr. Brodjik used to open to rent a public storage unit.

25                  No. 3, the content of the email explicitly refers to

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1 Mr. Brodjik's wife and how he and his wife assisted Mr. David  
2 in packing up the law firm office and moving it.

3 So even if Mr. Gerzog and Mr. Gutman were correct as a  
4 legal matter, the government could still as a factual matter  
5 prevail. But I still believe your Honor is correct that all of  
6 these arguments go to weight, not admissibility.

7 MR. GUTMAN: Your Honor, on admissibility, it's a  
8 question of who -- it is the prosecution's burden.

9 THE COURT: Don't you think they've just met it as a  
10 threshold matter?

11 MR. GUTMAN: I don't. This is analogous to if they  
12 had a tape recording of a conversation made from the  
13 defendant's telephone, they could offer into evidence a call  
14 was made from this phone to this phone and you can draw  
15 whatever inference you want. But before they could introduce  
16 the tape recording and say this is the defendant's voice --

17 THE COURT: They just told me.

18 MR. GUTMAN: -- need somebody to identify his voice.

19 THE COURT: They just told me he physically provided  
20 from his own home to an agent one of the emails in the chain.

21 MR. GUTMAN: A, that's not admissible. That's not in  
22 a form that was --

23 THE COURT: Excuse me.

24 MR. GUTMAN: I don't believe it's admissible. I  
25 believe that was in a proffer statement. We aren't -- I think

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1 they can't meet their burden if it's an initial burden on the  
2 prosecution, they can't meet it by offering this statement.

3 THE COURT: It's not a statement. It's he provided a  
4 document which authenticates the email chain.

5 MR. GUTMAN: How is that admissible?

6 MR. PASTORE: Your Honor.

7 THE COURT: Because you're saying that I have to make  
8 some initial finding. That's enough for me.

9 MR. GUTMAN: You have to say that the evidence that  
10 will be presented and admissible before the jury is enough for  
11 a reasonable juror to decide, to believe that it's his words,  
12 that he's the author.

13 THE COURT: I think that what the government just  
14 argued was good enough for a reasonable juror.

15 MR. PASTORE: One statement for the record. It was  
16 the email was obtained pursuant to we got a search warrant to  
17 cover it. Initially given on consent, we got a search warrant  
18 to cover it, so it would be admissible in any event.

19 MR. GERZOG: You can't put in that Mr. Brodjik gave  
20 you something. You can certainly put in that you got it off  
21 the computer.

22 THE COURT: They are not proposing that any of this be  
23 told the jury. They are putting on a witness who extracted  
24 certain emails from a computer. You are simply the ones that  
25 are challenging that. They are not going to ask this witness,

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1 hey, did we also get another copy of one of these pursuant to a  
2 search warrant? This is your argument. It has nothing to  
3 do --

4 MR. GERZOG: That is. He will testify in fact that  
5 that's how he got them, pursuant to the search warrant.

6 THE COURT: No, it's separate. There's a search  
7 warrant at the office and there's a search warrant from his  
8 home. Correct?

9 MR. PASTORE: That's correct, your Honor.

10 THE COURT: Okay. All right. The witness can go  
11 forward tomorrow.

12 MR. PASTORE: Thank you, Judge.

13 (Adjourned to January 17, 2013 at 9 a.m.)

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